रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003—05

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भारत का राजपत्र
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No. 42] NEW DELHI, OCTOBER 14—OCTOBER 20, 2007, SATURDAY/ASVINA 22—ASVINA 28, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके ।

Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप—खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विज्ञान और प्रौद्योगिकी मंत्रालय

(विज्ञान और प्रौद्योगिकी विभाग)

नई दिल्ली, 10 अक्तूबर, 2007

का.आ. 3060.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में विज्ञान और प्रौद्योगिकी मंत्रालय के प्रशासनिक नियंत्रणाधीन अधीनस्थ कार्यालय, राष्ट्रीय एटलस एवं थिमैटिक मानचित्रण संगठन (नैटमो), कोलकाता को, जिनके 80% कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है ।

[फा. सं. 11028/1/2005-रा. भा.]

नीलाम्बर पाण्डेय, संयुक्त निदेशक (रा. भा.)

MINISTRY OF SCIENCE AND TECHNOLOGY
(Department of Science and Technology)

New Delhi, the 10th October, 2007

S.O. 3060.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies National Atlas & Thematic Mapping Organisation (NATMO), Kolkata a subordinate office under the Administrative Control of Ministry of Science and Technology, 80% staff whereof have acquired the working knowledge of Hindi.

[File No. 11028/1/2005 (OL)]

NILAMBAR PANDEY, Jt. Director (OL)

कार्यालय मुख्य आयकर आयुक्त, जयपुर

जयपुर, 11 अक्तूबर, 2007

सं. 03/2007-08

का.आ. 3061.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्द्वारा निर्धारण वर्ष 2004-2005 एवं 2005-06 के लिए कथित धारा के उद्देश्य से "श्री आर्य विद्यापीठ सोसायटी, भुसावर, जिला-भरतपुर" को स्वीकृति देते हैं ।

बशर्ते कि समिति आयकर-नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड

(23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे ।

[क्रमांक: मुआआ/अआआ/(समन्वय)/जय/10(23सी) (vi)/07-08]

एस. सी. कपिल, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX

Jaipur, the 11th October, 2007

No. 03/2007-08

S.O. 3061.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves "Shri Arya Vidyapeeth Society, Bhusawar, District-Bharatpur" for the purpose of said section for the A. Y. 2004-05 and 2005-06.

Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl. CIT(Coord.)/2007-08]

S. C. KAPIL, Chief Commissioner of Income-tax

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 16 अक्तूबर, 2007

का.आ. 3062.—सार्वजनिक परिसर (अप्राधिकृत दखलकार की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, सरकार की एक राजपत्रित अधिकारी सुश्री कल्पना मंडल को एतद्द्वारा उक्त अधिनियम के प्रयोजनार्थ संपदा अधिकारी के रूप में नियुक्त करती है, जो संपदा अधिकारी को उक्त अधिनियम द्वारा अथवा इसके अन्तर्गत प्रदत्त शक्तियों का प्रयोग तथा सौंपे गए कार्यों का निष्पादन नीचे विनिर्दिष्ट सार्वजनिक परिसरों के संबंध में अपने क्षेत्राधिकार की स्थानीय सीमाओं के भीतर करेंगी :–

(1) कालेज कैम्पस के भीतर और बाहर आर. ए. के. कालेज ऑफ नर्सिंग से संबंधित समूचे भूखण्ड/भवन ।

(2) आर. ए. के. कालेज ऑफ नर्सिंग, नई दिल्ली के संपदा अधिकारी के निर्णयानुसार कालेज प्राधिकारी/स्टाफ के प्रयोग हेतु संपदा निदेशालय, शहरी कार्य और गरीबी उपशमन मंत्रालय, भारत सरकार द्वारा नियत सभी भूमि/भवन ।

[सं. ए. 11011/5/2004-एन]

अरविन्द कुमार, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 16th October, 2007

S.O. 3062.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of unauthorised occupants) Act, 1971 (40 of 1971) the Central Government hereby appoints Ms. Kalpana Mandal, being a Gazetted Officer of the Government to be an Estate Officer for the purposes of the said Act. Who shall exercise the powers conferred and perform the duties imposed on the Estate Officer by or under the said Act within the local limits of her jurisdiction in respect of the Public Premises specified below.

(1) All plots of Land/Building belonging to the R.A.K. College of Nursing, New Delhi inside or outside the College campus;

(2) All Land/Building earmarked by the Directorate of Estate, Ministry of Urban Affairs & Poverty Alleviation, Government of India, for use of the College Authority/Staff as per the decision of the Estate Officer of the R.A.K. College of Nursing, New Delhi.

[No. A. 11011/5/2004-N]

ARVIND KUMAR, Under Secy.

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 4 अक्तूबर, 2007

का.आ. 3063.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में मानव संसाधन विकास मंत्रालय (उच्चतर शिक्षा विभाग) के अन्तर्गत महर्षि सान्दीपनि राष्ट्रीय वेदविद्या प्रतिष्ठान, प्राधिकरण भवन, द्वितीय तल, भरतपुरी, उज्जैन को, ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है ।

[सं. 11011-7/2005-रा. भा. ए.]

केशव देसिराजु, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

New Delhi, the 4th October, 2007

S.O. 3063.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies Maharshi Sandipani Rashtriya Vedvidya Pratishthan, Pradhikaran Bhavan, 2nd floor, Bharatpuri, Ujjain under the Ministry of Human Resource Development, (Deptt. of Higher Education) as a office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-7/2005-O.L.U.]

KESHAV DESIRAJU, Jt. Secy.

(राजभाषा प्रभाग)

नई दिल्ली, 4 अक्तूबर, 2007

का.आ. 3064.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा और साक्षरता विभाग) के अन्तर्गत नवोदय विद्यालय समिति के अधीन जवाहर नवोदय विद्यालय, माना कैम्प–रायपुर (छत्तीसगढ़) को, ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है ।

[सं. 11011-7/2005-रा. भा. ए. (पार्ट-I)]

केशव देसिराजु, संयुक्त सचिव

(O.L. Division)

New Delhi, the 4th October, 2007

S.O. 3064.—In pursuance of sub rule (4) of rule 10 of the Official Language (Use for Official Purposes of the Union) Rules 1976 the Central Government hereby notifies the Jawahar Navodaya Vidyalaya, Mana Camp - Raipur (Chhatishgarh) an office of Navodaya Vidyalaya Samiti under the Ministry of Human Resource Development, (Deptt. of School Education and Literacy) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-7/2005-O.L.U. (Pt-I)]

KESHAV DESIRAJU, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 4 अक्तूबर, 2007

का.आ. 3065.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधनों की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	5817 : 1992	1, सितम्बर 2007	30 सितम्बर 2007
2.	10359 : 1982	3, सितम्बर 2007	30 सितम्बर 2007
3.	10360 : 1982	3, सितम्बर 2007	30 सितम्बर 2007

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तपुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' व प्रमुख (सिविल इंजीनियरी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 4th October, 2007

S.O. 3065.—In pursuance of clause (b) of sub-rule (1) of rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :—

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	5817 : 1992	1, September 2007	30 September 2007
2.	10359 : 1982	3, September 2007	30 September 2007
3.	10360 : 1982	3, September 2007	30 September 2007

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref : CED/Gazette]

A. K. SAINI, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 9 अक्तूबर, 2007

का.आ. 3066.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानक का विवरण नीचे अनुसूची में दिए गया है वे स्थापित हो गया हैं :

अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि

(1)	(2)	(3)	(4)
1.	आई एस 16001 : 2007 कार्यस्थल पर संस्थागत जवाबदेही - अपेक्षाएं	–	सितम्बर 2007

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : एम एस डी/जी-8]

पी. भटनागर, वैज्ञानिक 'ई' एवं प्रमुख (प्रबंध एवं तंत्र)

New Delhi, the 9th October, 2007

S.O. 3066.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established & Title	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 16001 : 2007 Organizational Accountability at the Work Place -Requirements	—	September 2007

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : MSD/G-8]

P. BHATNAGAR, Scientist 'E' & Head (Management & Systems)

नई दिल्ली, 9 अक्तूबर, 2007

का.आ. 3067.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :--

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 3586: 2007 जीवन रक्षक नौकाओं के उपस्करों की अनुशंसाएं (पहला पुनरीक्षण)	आईएस 3586: 1966	30 सितम्बर 2007
2.	आईएस 4568: 2007 जीवन रक्षक नौकाओं के डांड (लकड़ी)-विशिष्टि (पहला पुनरीक्षण)	आईएस 4568: 1968	30 सितम्बर 2007
3.	आईएस 7451 (भाग 6): 2007/ आईएसओ 2261: 1994 प्रत्यागामी आंतरिक दहन इंजन भाग 6 हस्त-चालित नियंत्रण युक्तियां-गति की मानक दिशा (पहला पुनरीक्षण)	आईएस 7451 (भाग 6): 1974	31 अगस्त 2007
4.	आईएस 10478: 2007/ आईएसओ 6519: 1993 डीजल इंजन-ईंधन इंजेक्शन पम्प-शाफ्ट के सिरों और हब के लिए टेपर (पहला पुनरीक्षण)	आईएस 10478: 1983	31 अगस्त 2007
5.	आईएस 14511 (भाग 2):2007/ आईएसओ 8984-2:1993 डीजल इंजन-ईंधन इंजेक्टरों का परीक्षण भाग 2 परीक्षण पद्धतियां (पहला पुनरीक्षण)	आईएस 14511 (भाग 2) : 1998	31 अगस्त 2007
6.	आईएस 15753: 2007 स्वचल टायर-टायर ब्लाडर-क्यूरिंग अतप्त प्रक्रिया	–	30 जून 2007

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : टीईडी/जी-16]

राकेश कुमार, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 9th October, 2007

S.O. 3067.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian standards hereby notifies that the Indian Standards, particulars of which are given in the

Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., year and title of the Indian Standards Established	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 3586:2007 Recommendation for lifeboats equipment (First Revision)	IS 3586:1966	30 Sept 2007
2.	IS 4568 : 2007 LIfeboat Oars (wood)-Specification (First revision)	IS 4568 : 1968	30 Sept 2007
3.	IS 7451 (Part 6) : 2007/ISO 2261: 1994 Reciprocating Internal Combustion Engines Part 6 Hand-Operated Control Devices -Standard Direction of Motion (First Revision)	IS 7451 (Part 6) : 1974	31 Aug 2007
4.	IS 10478 : 2007/ ISO 6519 : 1993 Diesel Engines-Fuel Injection Pumps-Tapers for Shaft Ends and Hubs (First Revision)	IS 10478 : 1983	31 Aug 2007
5.	IS 14511 (Part 2) : 2007/ISO 8984-2 : 1993 Diesel Engines-Testing of Fuel Injectors Part 2 Test Methods (First Revision)	IS 14511 (Part 2) : 1998	31 Aug 2007
6.	IS 15753: 2007 Automotive Tyres-Tyre Curing Bladder-Cold Process	—	30 June 2007

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: TED/G-16]

RAKESH KUMAR, Scientist 'F' & Head
(Transport Engg.)

नई दिल्ली, 10 अक्तूबर, 2007

का.आ. 3068.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाईसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :--

अनुसूची

क्रम संख्या	लाइसेंस संख्या	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	रद्द करने की तारीख
1	2	3	4	5
1.	8018968	प्रस्टीज लाईट्स प्रा. लि. सी-3 मुनि-की-रेती, धालवाला औद्योगिक क्षेत्र, श्रृषिकेश टीहरी गढ़वाल उत्तरांचल	टंगस्टन तंतु वाले सामान्य सेवा बिजली के बल्ब	9 अप्रैल 2007
2.	8782302	मैसर्स सूर्य किरण ईंजी. प्रा. लि., प्लाट नं.-64, सेक्टर-5, II-ई, बीएचईएल, हरिद्वार, उत्तरांचल	प्रणोदक टाइप एसी संवाती पंखे	7 मई 2007
3.	8771596	गौरंग प्रोडक्ट्स प्रा. लि. प्लाट नं. 10 साऊथ साईड आफ जी.टी. बुलन्दशहर रोड, औद्योगिक क्षेत्र, उत्तर प्रदेश गाजियाबाद-201 001	जल, गैस और मलजल के लिए बिजली से वेल्डित इस्पात के पाइप (168.3 से 2540 मिमी बाहरी व्यास)	7 मई 2007

1	2	3	4	5
4.	8771495	गौरंग प्रोडक्ट्स प्रा. लि. प्लाट नं. 10 साऊथ साईड आफ जी.टी. बुलन्दशहर रोड, औद्योगिक क्षेत्र, उत्तर प्रदेश गाजियाबाद-201 001	संरचना प्रयोजनों के लिए इस्पात के पाइप	7 मई 2007
5.	8671895	जी. एफ. इंटरनेशनल, प्लाट नं. 4/49, साईट-4, औद्यो. क्षेत्र, साहिबाबाद, गाजियाबाद उत्तर प्रदेश	घरेलु एवं सामान्य कार्यों के लिए स्विच	13 जून 2007
6.	8671996	जी. एफ. इंटरनेशनल, प्लाट नं. 4-49, साईट-74, औद्यो. क्षेत्र, साहिबाबाद, गाजियाबाद, उत्तर प्रदेश	250 वोल्ट और 16 एम्पीयर तक की रेटित करंट के लिए प्लग और सॉकेट निर्गम	13 जून 2007
7.	8797214	मैसर्स देवांशु एप्लाईंसिज प्रा. लि. ई-9, यू.पी.एस. औद्यौगिक क्षेत्र, सेलाकुई, देहरादून उत्तरांचल	अचल भंडारण टाइप पानी गर्म करने के बिजली के हीटर	19 जून 2007
8.	8797315	मैसर्स देवांशु एप्लाईंसिज प्रा. लि. ई-9, यू.पी.एस. आई.डी. सी. औद्योगिक क्षेत्र, सेलाकुई, देहरादून उत्तरांचल	पानी गर्म करने के इंस्टेंट हीटर	19 जून 2007

[सं० सी एम डी/13:13]
ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 10th October, 2007

S.O. 3068.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :

SCHEDULE

Sr. No.	Licence No.	Name & Address of the Party	Title of the Standard	Date of Cancellation
1	2	3	4	5
1.	8018968	Prestige Lights Pvt. Ltd. C-3, Muni-ki-Reti, Dhalwala Industrial Area, Rishikesh, Tehri Garhwal Uttaranchal	Tungsten filament general Service Electric Lamps	9 April 07
2.	8782302	Surya Kiran Eng. Pvt. Ltd, Plot No. 64, Sector-5, II-E, BHEL, Hardwar Uttaranchal	Propeller type AC ventilating fans	7 May 07

1	2	3	4	5
3.	8771596	Gaurang Products Pvt. Ltd. Plot No.10, South Side of GT Road, Bulandshahar Road Industrial Area, Ghaziabad, Uttar Pradesh-201001.	Steel Pipes for water and Sewage (168.3 to 2.540mm outside Diameter)-Specification	7 May 07
4.	8771495	Gaurang Products Pvt. Ltd. Plot No. 10, South Side of GT Road, Bulandshahar Road Industrial Area Ghaziabad Uttar Pradesh.	Steel Tubes for Structural Purposes—Specification	7 May 07
5.	8671895	G.F. International Plot No. 4/49, Site-IV, Industrial Area, Ghaziabad, Sahibabad Uttar Pradesh.	Switches for domestic and similar purposes	13 June 07
6.	8671996	G.F. International Plot No. 4/49, Site-IV, Industrial Area, Ghaziabad, Sahibabad Uttar Pradesh.	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	13 June 07
7.	8797214	Devanshu Appliances (P) Ltd E-9, UPSIDC Industrial Area,Selaqui Dehradun, Uttaranchal.	Stationary storage type electric water heaters	19 June 07
8.	8797315	Devanshu Appliances (P) Ltd E-9, UPSIDC Industrial Area,Selaqui Dehradun Uttaranchal.	Electric instantaneous water heaters	19 June 07

[No. CMD/13 : 13]

A. K. TALWAR, Dy. Dir. Genl. (Marks)

नई दिल्ली, 10 अक्तूबर, 2007

का.आ. 3069.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

अगस्त 2007 में स्वीकृत किए गए अनुज्ञप्ति

क्रम संख्या	लाइसेंस संख्या	लाइसेंसी का नाम व पता	उत्पाद का नाम तथा आई एस	अनुज्ञप्ति स्वीकृत करने की तिथि
1	2	3	4	5
1.	7766703	मैसर्स प्राणदीप ज्वैलर्स, 5, प्राणदीप ज्वैलर्स, गोपाल टावर के सामने, मणीनगर, स्टेशन रोड, अहमदाबाद-380 008	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	03-08-2007
2.	7768101	मैसर्स हरिप्रिया ज्वैलर्स, 211-212, शिवशक्ति शॉपिंग, रामचौक, गोड डोड रोड, सूरत-395 007	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	03-08-2007

1	2	3	4	5
3.	7768202	मैसर्स हरिप्रिया ज्वैलर्स, 211-212, शिव शक्ति शॉपिंग, रामचौक, गोड डोड रोड, सूरत-395 007	चांदी एवं चांदी मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112 : 2003	03-08-2007
4.	7770084	खोडयार ज्वैलर्स, डी 16, राजलक्ष्मी पार्क, अभिलाश चार रस्ता, न्यू सामा रोड, बडोदा-390 003	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	13-08.2007
5.	7770185	विपुल ज्वैलर्स, 4/15/129 64-16बी, सूर्या काम्पलैक्स, एसटी वर्क-शॉप रोड, मेहसाना-384 002	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	13-08-2007
6.	7770488	हर्ष ज्वैलर्स, 32, अक्षर आरकडे काम्पलैक्स, मेमनगर फायर स्टेशन के पास, नवरंगपुरा, अहमदाबाद	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	13-08-2007
7.	7766497	जी के पम्प, 35, विष्णु एस्टेट, रघुनाथ हिन्दी स्कूल के सामने, एल बी शास्त्री रोड, बापूनगर, अहमदाबाद	सबमर्सिबल पम्पसैट आई एस 8034:2002	1-08-2007
8.	7771692	आदर्श प्लांट प्रोटैक्ट लिमिटेड, 604, जी आई डी सी, विठ्ठल उद्योगनगर, आनंद-388 121	माउंटिड पाइप 5135 पार्ट 1 : 1994 हैंड रोटरी डस्टर पार्ट 1 बैली	21-08-2007
9.	7771793	अलंकार ब्लाक नंबर 11, शॉप नंबर 3, सिटी बस स्टाप के सामने, महाकाली मंदिर के पास, सैजपुर, अहमदाबाद-382 346	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	21-08-2007
10.	7771894	हरि ओम ज्वैलर्स, 293, सरसपुर पीठ बाजार, सरसपुर, अहमदाबाद	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	21-08-2007
11.	7771995	आनंत आनंदासया ज्वैलर्स, 106-107, जय आरकडे, पोस्ट आफिस, के पास, रूस्तमपुरा, मेन रोड, सूरत-395 003	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	21-08-2007
12.	7772088	जयेशकुमार बाब, जी 25-26, शेठ संकाभाई मार्केट, स्टेशन रोड, मेहसाना-384 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	21-08-2007
13.	7773191	मैसर्स तिरूपति ज्वैलर्स, जी/4 सोरम टावर, संभावनाथ देरासर, वासना बस स्टैंड के पास, वासना, अहमदाबाद-380 007	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-08-2007

1	2	3	4	5
14.	7773595	विश्वकर्मा इंजीनियरिंग, वर्क्स 168, शंकर एस्टेट, रेवाभाई एस्टेट के पास, अमराईवाडी, अहमदाबाद-380 026	ओपनवैल सबमर्सिबल पम्पसैट आई एस 14220 : 1994	28-08-2007
15.	7773902	शिवम सेल्स कारपोरेशन 1/सी, 1/डी, राजेन्द्रा इंडस्ट्रीज़ एस्टेट, खेरालू रोड, विसनगर, मेहसाना-384 315	पैकेजबंद पेयजल आई एस 14543 : 2004	17-08-2007
16.	7774294	मुरलीभाई पुंजालाल चोकसी तथा संस, एस बी 4, अविश्कार काम्पलैक्स, पुराना पादरा रोड, बड़ोदा-390 015	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
17.	7774395	भगवती ज्वैलर्स, 2, मातावाडी, बी एस, भवानी मंदिर, लाम्बे, हनुमर रोड, वराछा, सूरत-395 007	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
18.	7774496	धनलक्ष्मी ज्वैलर्स, एम जी रोड, मांडवी, बड़ोदा-390 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
19.	7774597	देवयानी ज्वैलर्स, 29, सरदार काम्पलैक्स, पटेल समाज वाडी के सामने, छोटी डायमंड मार्केट, वराछा रोड, सूरत-395 006	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
20.	7774601	खुशबू गोल्ड पैलेस, 15, सम्राट एपार्टमेंट, लांबे हनुमान रोड, वराछा, सूरत-395 006	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
21.	7774702	चोकसी मगनलाल तथा कंपनी, 1164, बनधारा खांचा, नाका, मानेक चौक, अहमदाबाद-380 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
22.	7774803	स्वर्णलता ज्वैलर्स, हरिभक्ति मार्केट के पास, घडियाली पोल, बड़ोदा-390 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007
23.	7774904	राजन ज्वैलर्स, जी-54, घेवर काम्प्लैक्स, शाहीबाग, अहमदाबाद-380 004	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	31-08-2007

1	2	3	4	5
24.	7772795	डयूमैक्स पम्प, 6, करूणासागर एस्टेट, अनिल स्टार्च मिल रोड, अहमदाबाद-380 025	सबमर्सिबल पम्पसैट, आई एस 8034 : 2002	24-08-2007

[सं० सी एम डी/13:11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 10th October, 2007

S.O. 3069.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sr. No.	Licence No.	Licensee Name	Product & IS No.	Date of GOL
1	2	3	4	5
1	7766703	Prandeep Jewellers, 5, Prandeep Complex, Opp. Gopal Tower, Maninagar Station Road, Ahmedabad-380008	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marketing IS 1417 : 1999	03-8-2007
2	7768101	Haripriya Jewellers 211-112 Shivshakti Shopping, Ramchowk,Ghod Dod Road, Surat 395 007	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417: 1999	03-8-2007
3	7768202	Haripriya Jewellers, 211-112 Shivshakti Shopping, Ramchowk,Ghod Dod Road, Surat 395 007	Silver and Silver Alloys, Jewellery/Artefacts-Fineness and Marking IS 2112 : 2003	03-8-2007
4	7770084	Khodiyar Jewellers, D/16, Rajlaxmi park, Abhilash Char Rasta, New Sama Road, Vadodara 390 002	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	13-8-2007
5	7770185	Vipul Jewellers, 4/15/129/64-16 B, Surya Complex, S.T. Workshop Road, Mehsana 384 002	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	13-8-2007
6	7770488	Harsh Jewellers, 32, Akshar Arcade Complex, Opp. Memnagar Fire Station, Navrangpura, Ahmedabad	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	13-8-2007
7	7766497	G. K. Pumps 35, Vishnu Estate, Opp. Raghunath Hindi School, L.B. Shastri Road, Bapunagar, Ahmedabad	Submersible Pumpsets IS 8034:2002	1-8-2007
8	7771692	Adarsh Plant Protect Ltd. 604, G. I. D. C., Vitthal Udyognagar Anand, Anand 388 121	Hand-Rotary Duster-Part1: Belly-Mounted Type- 5135(Pt.1):1994	21-8-2007

1	2	3	4	5
9	7771793	Alankar Block No 11, Shop No-3 Opp. City Bus Stop Near Mahakali Mandir Saijpur Ahmedabad 382 346	Gold and Gold Alloys, Jewellery,/Artefacts-Fineness and Marking IS 1417:1999	21-8-2007
10	7771894	Hari Om Jewellers 293 Saraspur Pith Bazar Saraspur Ahmedabad	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	21-8-2007
11	7771995	Anant Anandasya Jewellers 106-107 Jay Arcade Nere Post Office Rushtampura Main Road Surat 395 003	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	21-8-2007
12	7772088	Jayeshkumar Bab G.25-26, Sheth Sankabhai Market Station Road Mehsana 384 001	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	21-8-2007
13	7773191	Tirupati Jewellers G/4,Sauram Tower, Sambhavnath Derasar, Near Vasana Bus Stand, Vasana, Ahmedabad 380 007	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	28-8-2007
14	7773595	Vishvakarma Engg. Works 168, Shankar Estate,NR. Revabhai Estate, Amraiwadi, Ahmedabad 380 026	Openwell Submersible Pumpsets IS 14220:1994	28-8-2007
15	7773902	Shivam Sales Corp 1/C, 1/D, Rajendra Industries Estate, Kheralu Road, Visnagar, Mehsana 384 315	Packaged Drinking Water IS 14543:2004	17-8-2007
16	7774294	Murjibhai Punjalal Choksi & Sons S B-4, Avishkar Complex, Old Padra Road, Vadodara 390 015	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
17	7774395	Bhagvati Jewellers 2, Matawadi, B/S, Bhawani Mandir, Lambe Hanumar Road, Varachha, Surat -395007	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
18	7774496	Dhanlaxmi Jewellers M G Road, Mandvi, Vadodara -390001	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
19	7774597	Devyani Jewellers 29, Sardar Complex, Opp. Patel Samaj Wadi, Mini Diamond Market, Varachha Road, Surat 395006	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
20	7774601	Khushbu Gold Palace 15, Samrat Appartment, Lambe Hanuman Road, Varachha, Surat 395006	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007

1	2	3	4	5
21	7774702	Choksi Maganlal & Co 1164, Bandhara S Khancha Naka, Manekchowk, Ahmedabad-380001	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
22	7774803	Swarnalata Jewellers Near Haribhakti Market, Ghadiyali Pole, Vadodara-390001	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
23	7774904	Rajan Jewellers G-54 Ghewar Complex, Shahibaug, Ahmedabad-380004	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417:1999	31-8-2007
24	7772795	Dumex Pump 06, Karuna Sagar Estate, Anil Starch Mill Road, Ahmedabad 380025	Submersibls Pumpsets IS 8034:2002	24-8-2007

[No. CMD/13:11]
A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 11 अक्तूबर, 2007

का.आ. 3070.—भारतीय मानक ब्यूरो विनियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भरतीय मानक की संख्या और वर्ष	संशोधनों की संख्या और तिथि	संशोधन लागू होने की तिथि
1	2	3	4
1	456 : 2000	3, अगस्त 2007	31 अगस्त 2007
2	14959 (भाग 1) : 2000	1, सितम्बर 2007	30 सितम्बर 2007

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर, मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा निरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]
ए. के. सैनी, वैज्ञानिक 'एफ' व प्रमुख (सिविल इंजीनियरी)

New Delhi, the 11th October, 2007

S.O. 3070.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
1	2	3	4
1	456 : 2000	3, August 2007	31 August 2007
2	14959 (Part 1) : 2001	1, September 2007	30 September 2007

Copy of the standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref : CED/Gazette]
A. K. SAINI, Scientist 'F' & Head (Civil Engg)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 सितम्बर, 2007

का. आ. 3071.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, नई दिल्ली के पंचाट (संदर्भ संख्या 27/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-2007 को प्राप्त हुआ था।

[सं. एल 40012/6/2005-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th September, 2007

S.O. 3071.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2005) of the Central Government Industrial Tribunal-cum Labour Court No. II, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 24-9-2007.

[No. L-40012/6/2005-IR (DU)]
SURENDER SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

R. N. Rai, Presiding Officer

I.D. No. 27/2005

In the matter of:

Shri Satyavir,
S/o Shri Rattan Singh,
Vill : Banchari,
The Hodal Distt. Faridabad (Haryana).

Versus

1. The Jr. Engineer (Telephones),
   BSNL,
   Hassanpur, Tehsil Hodel,
   Faridabad (Haryana).
2. The Sub-Divisional Officer (Telephones),
   BSNL,
   Hassanpur, Tehsil Hodel,
   Faridabad (Haryana).
3. The District Manager/Central Manager (Tel.),
   BSNL,
   Sector : 16, Faridabad,
   Faridabad (Haryana).

AWARD

The Ministry of Labour by its letter No. L-40012/6/2005-IR (DU) Central Government dt. 8-4-2005 has referred the following point for adjudication.

The point runs as hereunder :

"Whether the action of the Management of BSNL Faridabad in terminating the services of Shri Satyavir S/o Shri Rattan Singh, Phone Mazdoor w.e.f. December, 2002 is just and legal ? If not, to what relief the workman is entitled ?"

The workman applicant has filed claim statement. In the claim statement it has been stated that the workman was engaged and appointed by the management as daily wager mazdoor and phone mechanic in the year 1997. In the beginning of the service career of the workman, the workman was working with the Management No. 2 and later on, approximately three years, the workman worked with the Management No. 1.

That the nature of the work, the workman performed the duties, picking material for repair of telephones and repair and telephone instruments alongwith rectifying the lining fault of the telephone lines etc. After keeping in view of the knowledge of all fields the management kept the workman as daily wager as telephone mechanic.

That the work and conduct of the workman remained quite satisfactory and during the service tenure not even a single adverse remark and complaint against the workman. The workman performed his duties with sincerity and dedication and to the satisfaction of his superiors.

That besides this the management has never given to the workman any appointment letter, pay slip and other service details required and mandatory under the service rules as well as labour laws. Wages were used to give by their other subordinates like J.E., Lineman etc. Even sometimes, the workman was paid lesser wages from the minimum wages fixed by the Central Government under the established law.

That the management never gave service benefits to the workman according to scheme during the employment even remaining in a lengthy period in the employment of the respondent/management.

That it is very surprising that the workman was terminated from the service in the month of December 2002 by the management without any fault of the workman instead of releasing the scheme under Central Service Rules treated him a temporary worker and then regular from the service. The workman was also not paid the earned wages for the month of November, 2002.

That on this illegal termination no show cause notice has been issued and nor given any opportunity of being heard. Neither the workman was asked for any explanation, no charge sheet was given nor any enquiry was conducted. The management has not even complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947.

That the managements have no right to snatch the bread from the workman without any fault of the workman especially without any of his fault and the respondent/ managements have no right to put the workman under the dark of starvation on humanitarian grounds also. It is illegal, unlawful and arbitrary on the part of the management and the said illegal termination unthoughtful, ultra-vires the constitution and violation of the principles of natural justice and the workman has legal right to reinstatement with full back wages and continuity of his services.

That the workman had completed more than 240 days in a year of continuous service and the workman is entitled to serve with the managements on the same post as the vacancy on which the workman was serving, is still existing moreover and the managements is not entitled to terminate the services of the workman in such arbitrary manner and the managements manner and the managements had violated the mandatory provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act 1947 which is clearly against the principles of natural justice and law.

That not only this, after illegal termination of the service of the workman, the workman continuously appeared before the managements and requested them to allow him to join his duties but the management did not allow the workman. Having no option, the workman served a demand notice dated 4-9-2004 calling upon the respondent/management to reinstate the workman but no fruitful result came out. The respondent/management have not reinstated and even not given any reply to the workman till date. Hence this petition is being instituted before your goodself.

The Management has filed written statement. In the written statement it has been stated that the reference itself is bad in law inasmuch as the workman is not a workman of the Management within the definition of the "workman" under Section 2(s) of the Industrial Disputes Act, 1947. The appropriate Government has not applied its mind while referring the alleged dispute for adjudication to this Hon'ble Tribunal under Section 10 of the Industrial Disputes Act, 1947, therefore the reference made by the appropriate Government is bad in law.

That the workman was neither engaged nor recruited by the management nor is he a member of service nor any appointment letter was issued, nor his services were terminated by the Management. Hence, the workman has no locus standi to raise any industrial dispute and, therefore, also the reference made by the appropriate Govt. is bad in law.

That the Statement of Claim and the references are not maintainable inasmuch as the same are not accompanied by an Order/Letter of alleged termination on the basis of which the workman has tried to raise this frivolous Industrial Dispute.

That there exists no employer-employee relationship between the workman and the management and therefore no Industrial Dispute is maintainable between them.

That in view of the judgement of the Hon'ble Supreme Court of India in the case of All India Railway Parcel and Goods Porters Union Versus Union of India reported in (2003) II SCC, 590 wherein it was held that the burden of proving the claim of continuous working rests on the claimants and for which they are required to furnish concrete proof and reliable documents whereas in the instant case the workman was failed to substantiate that he was ever appointed in the Management's Institution.

That in view of the judgement of the Hon'ble Supreme Court of India in the case of UP SEB Versus Hydro Electric Union reported in 2002 (10) SCC, 417 wherein it has been held that entitlement to a post can be determined only on the touchstone of relevant rules or on the basis that he is discharging such functions whereas in the present case, the workman has not fulfilled any of the eligibility conditions for appointment in the Management Organization.

That in view of the judgement of the Hon'ble Supreme Court of India in the case of State of Himachal Pradesh Versus Suresh Kumar Verma reported as JT 1996(2) SC 455, it has been held that appointment of Daily Wages basis is not an appointment to a post according to the rules and cannot give any protection to re-engage such person in any work or to appoint him/her against the existing vacancies. Therefore also, assuming without admitting that if the workman had worked on some day he is not entitled to any relief from this Hon'ble Tribunal.

The workman has also failed to produce any such proof of employment and without substantiating even the basic relationship of employer-employee the present reference has been made mechanically without any application of mind. It would be pertinent to mention herein that due to ban on the recruitment since 1985 by the Government of India, no recruitment has been made in the Management department since then and the said petty works of the department are being carried out on contract basis. Therefore a petty contractor can neither by any stretch of imagination nor under position of law be an employee of the Management department.

It is denied that in the nature of work, the workman performed the duties, either picking material for repair of

Telephones or Telephone instrument or rectifying the lining fault of the telephone lines as alleged. It is further denied that after keeping in view of the knowledge of any field, the management ever kept the workman as daily wages as a Telephone mechanic.

It is submitted that since the workman was never appointed by the Management, the question of giving him any appointment letter, pay slip or other service details required and mandatory under service rules or labour laws does not arise. It is therefore misconceived to allege that the wages were ever given by other subordinates like J. E. Lineman etc. There is also no question of any legal necessity to be performed by the subordinates with respect of the alleged handing over the wages to the workman. In view of the aforesaid, it is further misconceived to allege that sometimes, the workman was paid lesser wages from the minimum wages fixed by the Central Government under established law. It is further misconceived to allege that the Managements kept the unfairness of labour practice attitude with the workman.

It is denied that the workman was either ever terminated from the service in the month of December, 2002 by the Management without any fault of the workman or that instead of releasing the scheme under Central Service Rules ever treated him a temporary worker or ever thereafter regular from the service. It is further misconceived to allege herein that the workman was not paid the earned wages for the month of November, 2002. The workman is put to strict proof of the averments alleged in the para under reply. It is reiterated that since the Management never appointed the workman, the question of termination of his services does not arise. It would be important to reiterate that the workman herein has neither ever been recruited as per the recruitment rules and no appointment letter has ever been issued to him nor has been governed by the Civil Services Rules nor any attendance was required to be marked by him in the attendance register as it is done by the other regular Government employees.

It is misconceived to allege herein either that the Management has no right to snatch the bread from the workman without any fault of the workman especially without any of his fault or that the respondent/management have no right to put the workman under the dark of starvation on humanitarian grounds. It is submitted herein that the Management cannot proceed merely on humanitarian ground but is bound to act within the parameters of the prescribed rules and regulations. It is further submitted that as there has neither been any appointment nor there has been any termination of service by the management there is no question of any illegality, unlawfulness or arbitrariness on the part of the Management or the alleged termination either illegal or unthoughtful or ultra-vires against the Constitution or violation of any principle of natural justice. It is further misconceived to allege that the workman has any legal right for any reinstatement with any back wages or any continuity of service.

The workman applicant has filed rejoinder. In the rejoinder the workman applicant has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

From perusal of the pleadings of the parties the following issues arise for adjudication :

1. Whether there is employer-employee relationship between the management and the workman and the workman has worked for 240 days in each year from 1997 to December, 2002 ?
2. Whether the workman is entitled to reinstatement ?
3. To what amount of back wages the workman is entitled ?
4. Relief if any ?

ISSUE NO. 1 :

It was submitted from the side of the workman that he was engaged by the management no. 2 in the beginning and later on approximately after three years the workman worked under management no. 1. The management no. 2 is Sub-Divisional Office (Telephones), Hassanpur, Tehsil Hodel. The management no. 1 is Jr. Engineer (Telephones) BSNL, Hassanpur, Tehsil Hodel. The workman was engaged as daily wager as telephone mechanic. His services were terminated in 2002 by the management and he has not been paid one month's pay in lieu of notice and retrenchment compensation.

It was submitted from the side of the management that the applicant is not a workman and the government has sent reference mechanically without application of mind. The workman was neither engaged nor recruited by the management. He has no locus standi to raise any industrial dispute. The reference is bad in law. There is no employer and employee relationship between the management and the workman.

It was further submitted that it has been held in 2003 II SCC 590 that burden of proving the claim of continuous working rests on the claimant. He should furnish concrete proof and reliable documents in support of his case.

It was further submitted that it has been held in 2002 (10) SCC 417 that entitlement to a post can be determined on the basis of relevant rules.

It was further submitted that the Hon'ble Apex Court in JT 1996 (2 SC) 455 has held that the appointment of daily wager is not an appointment to a post accordingly to the rules and cannot give any protection to engage such person in any work. Even if the workman had worked on some days he is not entitled to any relief.

It was submitted that due to ban on recruitment since 1985 by the GOI, no recruitment has been made by the management since then and the petty work of the department are being carried out on contract basis. The petty contractor cannot by any stretch of imagination or any position of law can be an employee of the management.

The applicant is a workman u/s 2(s) of the ID Act, 1947 as he has allegedly discharged manual duties. He is not a Supervisor. Manual duties have been taken from him so he is a workman u/s 2 (s) of the ID Act, 1947.

It is true that the workman has to prove his averment by cogent documents. It is settled law that if the workman has worked for 240 days continuously in a year he cannot be retrenched without payment of compensation for 15 days for every completed year and one month's pay in lieu of notice.

(2002) 10 SCC 417 and JT 1999 (2 SCC) 455 are not applicable in the instant case. Even a daily wager who has worked continuously for 240 days is entitled to retrenchment compensation and one month's pay in lieu of notice. There appears to be no merit in the argument of the management.

The management can no doubt engage daily wagers. There is no prohibition for the same but prior to termination of the services of the daily wager it is mandatory on the management to make payment of one month's pay in lieu of notice and retrenchment compensation. If the management fails to do so the workman is entitled to reinstatement/compensation.

MW1 has admitted that the workman worked initially in 1997 only for a short period. He has further stated that he does not remember the period for which he was engaged as per the records.

MW1 has categorically admitted the engagement of the workman and it is the duty of the management to maintain records. The workman is not expected to maintain the records of the management.

MW1 has further admitted that he does not remember the exact amount of remuneration of the workman however, he was paid on daily wages. MW1 has admitted that the workman was engaged for the work like digging, cleaning, sweeping etc.

Thus, MW1 has clearly admitted the engagement of the workman. In case the management has engaged the workman for short period those documents should have been filed on the court record. The management has deliberately concealed the relevant documents.

MW1 has further admitted that the workman was engaged in Hodel Department, SDO whenever required.

The workman has filed Gate Passes from 1994 to 2002. He has signed the gate passes and SPM has signed the Gate Passes. On some of the Gate Passes there is seal of SPM, Hodel. The SPM Hodel has signed the Gate Passes.

It was submitted by the management that the Gate Passes B-41 to B-56 cannot be a proof of continuous working of a workman. The workman cannot get the documents regarding the payments as it is in the custody of the management.

The case of the management is that he was engaged for a short period. It was the duty of the management to file those documents. In case engagement is admitted the burden shifts on the management to prove that engagement was for a short period. No such documents have been produced. The workman has filed photocopies B-51 to B-61 regarding the duties performed by him. The management has not denied these photocopies. These photocopies also indicate that the workman worked up to 2002. The workman has filed document B-61 to B-67 in respect of the duties assigned to him by one Shri Dharamvir. B-67 is letter dated 02-09-2002 of Shri Dharamvir Sharma, Incharge, Telephone Center, Hassanpur, Distt. Faridabad. This letter has been sent to the SHO, Hassanpur. It has been stated that while the workman Satvir was repairing telephone no. 71903 he was beaten by the Jitan S/o Nathyal Halwai. This letter also indicates that the workman worked under the control and guidance of Shri Dharamvir Sharma, Incharge, Telephone Center, Faridabad. Shri Dharamvir Sharma has given him several duties as it is evident from the directions issued by him. It has been signed by him. If Shri Dharamvir Sharma was not the Incharge at the relevant period the management should have filed the certificate to that effect. It is not sufficient to state by the witness that he does not know Shri Dharamvir Sharma, Incharge, Telephone Center, Faridabad. If he was not the Incharge then the management should have certified the same.

Sh. Dharamvir Sharma, Incharge has assigned the work to the workman applicant and he has sent information to the Police Station regarding the fact that the workman was beaten while he was repairing a line. In the circumstances it was necessary to produce Sh. Dharamvir Sharma, Incharge. In case Sh. Dharamvir Sharma, Incharge was not the Incharge at that time there must be some other Incharge. He should have been produced by the management. The management has not produced any such witness. A witness has been produced who has deposed on the basis of the record. It has not been specifically mentioned in the affidavit of the management that Shri Dharamvir Sharma, Incharge was not Incharge at that time. In the facts and circumstances of the case it is to be

believed that Sh. Dharamvir Sharma, Incharge was Telephone Incharge at that time and he has assigned the duties to the workman and he has written complaint to the Police Station.

It is settled law that the workman has to prove his case on the basis of cogent documentary evidence. Averments of the affidavit/oral evidence is not sufficient. In the instant case the workman has filed documents regarding his engagement. The management witness has admitted his engagement. It is admitted to the management that petty contractors are engaged. If he was a petty contractor then there would be some contract for payment. No such contract paper has been filed. So it is held that the workman was engaged as daily wager by the management and there exists employer-employee relationship between the management and the workman and he has performed 240 days work in the each year i.e.1998, 1999, 2000, 2001 and 2002.

This issue is decided accordingly.

ISSUE NO. 2:

It was submitted from the side of the bank that reinstatement is not the only relief in all the cases of illegal termination. Section 11A of the ID Act, 1947 provides for payment of compensation also.

It was submitted from the side of the workman that compensation is payable in cases where an undertaking has become sick or it has been closed or it is in economic loss. It has not been established that the bank is in economic loss and it is a sick Industry.

In 2000 LLR 523 State of UP and Rajender Singh the Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

In AIR 2002 SC 1313 the Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25F, G of the ID Act are attracted. In Section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation has been paid to the workman.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid Section 25F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed unnecessarily so Section 25F, U, T and Clause 10 of the Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for removal. Retrenchment compensation is for compensating them so that they can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgement has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 and 309 are infringed. There is no constitutional mandate that the government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The

Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and ad hoc appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing the services of the workman have not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006 (4) Scale has not annulled Section 11 A of the ID Act. The judgement cited by the management is not applicable in the facts and circumstances of the case.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal dis-engagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgement of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

The management is at liberty to engage daily wagers but at the time of termination of their services they have to comply with the provisions of Sections 25 F, G & H of the ID Act, 1947. It is not valid to engage daily wagers and to remove them after taking work for 4-5 years. Section 25 F postulates one month's pay in lieu of notice and retrenchment compensation.

It has been specifically held in (2006) 4 SCC 1, Uma Devi's case as under :

"Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

The Hon'ble Apex Court also prohibits to replace an ad hoc employee by another ad hoc employee.

The Hon'ble Apex Court has held that once a workman has been engaged as daily wager or ad hoc employee he should be replaced by a regularly selected employee. It is not the case of the management that this workman was replaced by a regularly selected employee. Thus, the management has committed breach of the directions of the Hon'ble Supreme Court as well as Sections 25 F, G & H of the ID Act, 1947.

In case the workman is reinstated with back wages the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that Sections 25, G & H of the ID Act are not violated.

In view of the law cited above and the facts pertaining in this case, the workman is entitled to reinstatement. This issue is decided accordingly.

ISSUE NO. 3

It was submitted by the management that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968—three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer.

In 2005 IV AD SC 39—three Judges Bench of the Honb'le Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the ID Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex

Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

The workman is a manual worker. He is not a skilled workman. The workman has not disclosed the source of his livelihood during the period of his unemployment. It is true that he is not employed in any establishment still he must be doing some manual work for his subsistence. The workman has been illegally removed by the management after continuous working of 5 years.

In the facts and circumstances of the case the workman is entitled to 25% back wages only.

This issue is decided accordingly.

ISSUE No. 4

The workman applicant is entitled to reinstatement w.e.f. December, 2002 along with 25% back wages.

The reference is replied thus :

The action of the Management of BSNL Faridabad in terminating the services of Shri Satya Vir S/o Shri Rattan Singh, Phone Mazdoor w.e.f. December, 2002 is neither just nor legal. The management should reinstate the workman applicant w.e.f. December, 2002 alongwith 25% back wages within two months from the date of the publication of the award.

The award is given accordingly.

Date : 19-9-2007. R. N. RAI, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2007

का. आ. 3072.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-II, नई दिल्ली के पंचाट (संदर्भ सं.-28/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/4/2005-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th September, 2007

S.O. 3072.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 24-9-2007.

[No. L-40012/4/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

PRESENT :

R. N. Rai, Presiding Officer

I.D. No. 28/2005

Sh. Sanjay Kr. Tyagi ... Ist Party
Sh. Rakesh Kr. Singh ... IInd Party

In the matter of :

Shri Praveen Kr. Tyagi,
S/o Late Shri Brij Nandan Tyagi,
Vill. & Post : Barana,
Distt & Tehsil : Panipat,
Panipat (Haryana).

Versus

1. The General Manager (Telephone),
   Bharat Sanchar Nigam Limited,
   Karnal (Haryana)
2. The Sub-divisional Officer,
   O/O The S.D.O. Operation Division,
   Huda, Sector 25,
   Panipat (Haryana)

AWARD

The Ministry of Labour by its letter No. L-40012/4/2005-IR (DU) Central Government Dt. 5-4-2005 has referred the following point for adjudication.

The point runs as hereunder :

"Whether the action of the management of BSNL, Karnal in terminating the services of Shri Praveen Kumar S/o Late Shri Brij Mohan a daily mazdoor w.e.f. 2-11-2002 is just and legal ? If not, to what relief the workman is entitled to ?"

The workman applicant has filed statement of claim. In the statement of claim it has been stated that the workman was serving with the management as daily rated mazdoor in the office of the management Operation Division, BSNL, Huda, Sector-25, Panipat w.e.f. 1-10-2001 to 1-11-2002 continuously. During his tenure of the services, the work of the workman upto the entire satisfaction of his superiors and the management never raised any complaint against the workman. The workman performed his duty with hard work every time.

That as usual the workman was present on his duty on 2-11-2002 in his office at Operation Division, Huda, Sector-25, Sonipat, but the SDO i.e. the representative of the management did not allow the workman to perform his duty and illegally terminated the services of the workman

without issuing any prior notice nor conducted any domestic inquiry in arbitrary manner and when the workman asked the representative of the management that under which circumstances his services is being terminated, the representative of the management did not give any cause or reason and stated that the services of the workman is no more required further and directed to leave the premises of work.

That the workman had completed more than 240 days of continuous service and the workman is entitled to serve with the management on same post, as the vacancy on which the workman was serving, is still in existence moreover and the management is not entitled to terminate the services of the workman in such arbitrary manner and the management had violated the mandatory provisions of Sections 25 F, G and H of the ID Act, 1947 which is clearly against the principle of natural justice and law.

That not only this, after the illegal termination of the services of the workman, the workman continuously appeared before the management and requested them to allow him to join his duty but the management did not allow the request of the workman. Having no option, the workman sent a legal demand notice on dated 23-12-2002 to the management with the copy of the demand notice to the Labour-cum-Conciliation Officer, Faridabad and the same was served upon the management but instead, the management argued before the Conciliation Officer, Faridabad by their false and fabricated written statement dated 2-5-2003 and the conciliation could not meet between the parties before the Conciliation Officer, due to which the Govt. of India, Ministry of Labour/Shram Mantralaya referred the matter for adjudication to this Hon'ble Tribunal vide their order dated 5-4-2005. Hence the present statement of claim. A copy of the demand notice is annexed as Annexure-A.

That due to illegal termination the workman is unemployed even till now.

The management has filed written statement. In the written statement it has been stated that the reference is bad in law inasmuch as the claimant is not a workman of the management within the definition of the "workman" under Section 2 (s) of the ID Act, 1947. The appropriate Government has not applied its mind while referring the alleged dispute for adjudication to this Hon'ble Tribunal under Section 10 of the ID Act, 1947, therefore, the reference made by the appropriate government is bad in law.

That the claimant was neither engaged nor recruited by the management nor he is a member of service nor any appointment letter was issued, nor his services were terminated by the management. Hence, the claimant has no locus standi to raise any industrial dispute and, therefore, also the reference made by the appropriate government is bad in law.

That the statement of claim and the references are not maintainable inasmuch as the same are not accompanied by an Order/Letter of alleged termination on the basis of which the claimant has tried to raise this frivolous Industrial Dispute.

That there exists no employer-employee relationship between the claimant and the management and therefore no Industrial Dispute is maintainable between them.

That in view of the judgment of the Hon'ble Supreme Court of India in the case of All India Railway Parcel and Goods Porters Union Vs. Union of India reported in (2003) 11 SC 590 wherein it was held that the burden of proving the claim of continuous working rests on the claimants and for which they are required to furnish concrete proof and reliable documents whereas in the instant case the claimant has failed to substantiate that he was ever appointed in the management's institution.

That in view of the judgment of the Hon'ble Supreme Court of India in the case of U.P. SEB Vs. Hydro Electric Union reported in 2002 (10) SCC 417 wherein it has been held that entitlement to a post can be determined only on the touchstone of relevant rules or on the basis that he is discharing such functions whereas in the present case, the claimant has not fulfilled any of the eligibility conditions for appointment in the management organization.

That in view of the judgment of the Hon'ble Supreme Court of India in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma reported as JT 1996 (2) SC 455, it has been held that appointment of daily wages basis is not an appointment to a post according to the rules and cannot give any protection to re-engage such person in any work or to appoint him/her against the existing vacancies. Therefore, also assuming without admitting that if the claimant had worked on some day, is not entitled to any relief from this Hon'ble Tribunal.

It is specifically denied that the claimant was serving with the management as daily rated mazdoor in the office of the management Operation Division, BSNL, Huda, Sector-25, Panipat w.e.f. 1-10-2001 to 1-11-2002 continuously. He is called upon to produce the letter of appointment. The claimant has also failed to produce any such proof of employment even before the Conciliation Officer. And without substantiating even the basic relationship of employer-employee the present reference has been made mechanically without any application of mind. It is however submitted herein that the said claimant was actually a petty contractor and some of the petty works of the department were entrusted to him on contract basis and the payments were made to him on the completion or the said works unde the contract. It would be pertinent to mention herein that due to ban on the recruitment since 1985 by the Government of India, no recruitment has been made in the management department since then and the

said petty works of the department are being carried out on contract basis. Therefore, a petty contractor can neither by any stretch of imagination nor under position of law be an employee of the management department. It is further that either during any tenure of his service, the claimant upto the entire satisfaction of his superiors and the management never raised complaint against the claimant or that the claimant performed his duty with hard work every time. It is however, submitted that since the claimant herein was never appointed by the management the averments alleged by the claimant in the para under reply are out of place and the question of his work and conduct being satisfactory during the period of employment does not arise at all. The claimant is called upon to produce the records maintained by him as alleged showing his satisfactory work and conduct. The management reserves its right to file proper reply to the said averment if the claimant produces such documents.

It is denied that either the said claimant was present on his duty on 2-11-2002 in his office at Operation Division, Huda or the said SDO did not allow him to perform his duty or illegally terminated his services without any prior notice or the representatives of the management did not give any cause or reason or stated that the services of the claimant is no more required or directed to leave the premises of work. It is reiterated that since the claimant herein was only a petty contractor and not a claimant, the question of termination of his services does not arise. It is further reiterated that the claimant was entrusted only with some of the petty works on contract basis and payments were made to him accordingly. It would be pertinent to mention herein that all the employees recruited in the management department as per the recruitment rules are paid off their respective salaries on acquaintance rolls (salary register) whereas the payment to the claimant has been made on simple receipt for the works carried out by him. It would be important to reiterate that the claimant herein neither ever been recruited as per the recruitment rules no appointment letter has ever been issued to him nor has he been governed by the Civil Services Rules nor any attendance was required to be marked by him in the attendance register as it is done by the other regular government employees. It is further submitted that SDO is not the competent appointing authority and as such he is not authorised to terminate services whatsoever. It is further submitted that as the claimant was merely a petty contractor, the question of serving of chargesheet or any domestic inquiry against him does not arise. It is, therefore, submitted that the allegation of his termination is hypothetical and concocted. A copy of the details of the payment made to the claimant herein with respect to the said petty contract is herewith annexed as Annexure R/1.

It is denied that the claimant has either completed 240 days of continuous service or is entitled to serve the management on the same post or that the management has ever violated the mandatory provisions of Section 25F, G & H of the ID Act, 1947 or that any act whatsoever is against the principles of natural justice and law. Rest of the allegations made by the claimant in the para under reply are the repetition made in the claim, therefore, the corresponding replies are reiterated herein for this purpose. It is however submitted that the claimant has worked for altogether 93 days during the period from 1-11-2001 to 31-8-2002 on petty contract basis for petty jobs assigned to him for which the payments have been made to him under different rates as per the details annexed along with this reply as Annexure R/1, therefore, the question of completion of 240 days of service does not arise as the said work was only on need basis only on verbal contractual system. It is further submitted that the question of violation of the provisions of Section 25 F, G & H of the ID Act, 1947 does not arise at all as the claimant herein is not covered under the provisions of the ID Act, 1947. It is further submitted that as there has been no appointment nor there has been any termination of service by the management, there is no question of any illegality or contravention of any principle of natural justice. Therefore, it can be concluded that the claimant cannot invoke any of the provisions of the ID Act, 1947 since he was working as petty contractor and the verbal contract stood automatically cancelled on the completion of the work.

The workman applicant has filed rejoinder. In the rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

It was submitted from the side of the workman that he was engaged as daily rated in the office of the management w.e.f. 1-10-2001 and he worked continuously upto 1-11-2002. He has completed 240 days continuous service and he is entitled to reinstatement u/s 25 F of the ID Act, 1947.

It was submitted from the side of the management that the claimant was neither engaged nor recruited by the management. He was given petty job and payment to him was made for the months he worked. He has not completed 240 days service.

It is settled law that the workman has to prove that he has worked continuously for 240 days. The workman applicant has filed photocopies of the attendance sheet. These photocopies indicate that the workman applicant has worked in October, 2001, November, 2001, December, 2001, Jan., 2002 and for some days in February, 2002. Thus, the workman applicant has worked only for five months. The other photocopies of attendance sheet indicate that

he was absent thereafter. Thus, the workman applicant has worked approximately for 135 days, if the photocopies of attendance sheet is taken into account.

He has filed certificate of SDO, paper no. B-37 and it has been shown that he worked as a Clerk from 1-10-2001 to July, 2002. This certificate is contradictory to the claim statement and attendance sheet. In the attendance sheet he has been shown as labour whereas the SDO has issued certificate for Clerk. The workman applicant has filed no other documents to prove that he has worked continuously for 240 days.

It was submitted from the side of the management that the workman has worked for 93 days and he has worked against assignments on special occasions. The management has made payment to him as expenditure for specific jobs. It appears that some specific job has been given to the workman applicant and he has performed those jobs and the workman applicant has received the amount for the job done.

It is settled law that burden is on the workman applicant to prove by cogent documentary evidence that he has worked continuously for 240 days. The management has admitted that he has worked for 93 days. He has performed specific job for 93 days and payments to him have been made for the said specific job.

Payments made to the applicant show that he has been paid for the different jobs at different times. Those jobs have been mentioned in payment vouchers.

The management has admitted that the workman has worked for 93 days and the documents regarding payment made to the workman applicant have been filed. The workman has been paid Rs. 1250 on 10-9-2002, Rs. 1250 on 7-9-2002, Rs. 1600 on 16-5-2002 to 21-5-2002, Rs. 900 on 1-3-2002 to 9-3-2002, Rs. 1300 on 16-2-2002 to 28-2-2002, Rs. 1500 on 16-11-2001 to 30-11-2002 and Rs. 1550 for the period from 1-11-2001 to 15-11-2001. These payments indicate that specific job was assigned to the workman applicant and the workman applicant performed that jobs with the help of the others and payments sometimes twice in the same month have been made to the applicant.

From perusal of the photocopies of attendance sheets it transpires that the workman has worked for complete 4 months and he has worked for 15 to 20 days in the 5th month. According to the attendance sheets the workman has not performed more than 135 to 140 days. The workman has not filed any other document to show that he has worked for 240 days or more. The workman has failed to prove that he has worked continuously for 240 days, so he is not entitled to any relief as claimed by him.

The law cited by both the parties are not applicable in the facts and circumstances of the present case.

The reference is replied thus :

The action of the management of BSNL, Karnal in terminating the services of Shri Praveen Kumar S/o Late Brij Mohan a daily rated mazdoor w.e.f. 2-11-2002 is just and legal. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Date : 14-9-2007 R. N. RAI, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2007

का. आ. 3073.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 124/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/85/2004-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th September, 2007

S.O. 3073.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 124/2004) of the Central Government Industrial Tribunal-cum Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 24-9-2007.

[No. L-40012/85/2004-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Shrikant Shukla, Presiding Officer

I.D. No. 124/2004

Ref. No. L-40012/85/2004-IR(DU) Dated 29-10-2004

BETWEEN

Sh. Shailendra Singh
S/o Ram Naval Singh,
Village Meheva Kunwar,
Post Hareria, Distt. Basti.

AND

The Telecom District Manager,
Telecom Deptt., BSNL
Bahraich

The Chief General Manager,
Telecommunication East Lucknow/
The Principal General Mgr.
Pee Key Bhawan
Lucknow

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following dispute no. L-40012/85/2004-IR (DU) dt. 29-10-04 for adjudication to the Presiding Officer, CGIT-cum-Labour Court, Lucknow :

> "Whether the action of the management of BSNL, Bahraich in terminating the services of Shri Shailendra Singh S/o. Shri Ram Naval Singh daily wager w.e.f. 31-7-2001 is legal and justified ? If not to what relief the workman is entitled ?"

Worker's case in brief is that he joined his services as daily wages/casual labour (IV post) August 1998 and since then he has been working on the said post and has worked for more than 240 days of service in the preceding years. It is alleged that the Telecom District Manager, Bahraich terminated the services of the worker w.e.f. 31-7-2001 without any valid reason and in violation of provision of Section 25F of the I.D. Act. It is also alleged that the workman was not given any notice compensation in lieu of his services. It is also alleged that juniors to the workman have been retained and continue to work whereas the worker's services has been terminated violating the provision of Section 25 G of the I.D. Act. It is also submitted that opposite party has engaged new workmen thus the opposite party has violated the provision of Section 25 H of the ID Act. It is also alleged that the workman is entitled for regularisation and to get temporary status. The worker has accordingly prayed for reinstatement with payment of wages for entire period of service and further prayed to direct to the opposite party to provide temporary status to the worker with further consequence of regularisation in regular establishment and also to provide bonus as the worker has been deprived of the said benefit.

Worker has filed photocopy of the following documents :

1. Letter of SDO Nanpara, Bahraich dt. 13-6-01 regarding regularisation of casual labour alongwith proforma paper Nos. 5/14, 15, 15A.
2. Memo dt. 18-7-2000 granting temporary status to some workers paper no. 5/17.
3. Copy of award dt. 23-11-2000 between A.P. Tewari and General Manager, Telegraph Deptt., Lucknow.
4. Letter the date of which is not legible of Dy. GM (Admn.) to Asstt. Director General, BSNL, New Delhi regarding regularization of casual labours alongwith list paper Nos. 5/22 to 5/25.

Opposite party has filed written statement disputing the claim of the workman and has alleged that the worker was never appointed in any capacity in the department of the opposite party at any point of time, therefore, there arises no question of alleged termination of his services w.e.f. 31-7-01 and thus arises no question of having completed 240 days service preceding his alleged termination. It is submitted that the opposite party has its Service Rules and Recruitment Rules and all appointments are made strictly in accordance with the prescribed rules. In so far as the engagement of the worker on daily wages is concerned it is submitted that there was a complete ban on the engagement of resh casual labourers/daily wagers in the department w.e.f. 12-6-88. It is submitted that letter dated 13-6-01 of the claim statement is false and fictitious document and appears to have been issued under extraneous considerations to provide illegal benefits to the worker by the SDE without having any authority to engage any casual labour. It is well settled law that any document or certificate issued by any incompetent authority has no bearing in the eyes of law. It is also submitted that earlier the department of opposite party had engaged casual labours on muster-roll, however, after putting ban on engagement of casual labours/daily wagers w.e.f. June 1988 which was later on again circulated in Feb. 1999 no fresh labour has been engaged on the muster roll. It is further submitted that those labourers who were earlier working on muster-roll and were covered under grant of temporary status and regularization scheme have been granted temporary status. The case of the worker does not fall within that category because he was never engaged by the department in any capacity. Regarding the award passed in favour of Anurag it has no bearing in the eyes of law in the present case. It is alleged that worker was never engaged nor had ever worked therefore he is not entitled for grant of any benefit under the temporary status scheme. It is further submitted that after creation of Bharat Sanchar Nigam Ltd. w.e.f. Oct. 2000, the opposite party has acquired the status of an autonomous body and has its separate legal entity. It is also submitted that worker was never appointed or engaged in the opposite party in any capacity either in August 1988 or subsequently, therefore, no question arises for any alleged oral termination order w.e.f. 31-7-01 being passed against him or violation of any of the provisions of I.D. Act, 1947 by the opposite party. Worker is therefore not entitled to any relief.

Worker has filed rejoinder in which he reiterated the fact stated in statement of claim. However, in para 5 page 3 of the rejoinder the worker has stated that he has been working in the department since 1997 with the hope that his services would be regularised. In para 5 page 5 of the

rejoinder it is further stated that it is matter of fact that the worker has been working in the department as a casual labourer since 1997 and getting wages. In para 7 of the rejoinder the fact has been reiterated that the worker has been working since 1997.

Worker has examined himself.

Opposite party has filed affidavit of Sri Ram Charan Divisional Engineer, HQ in the Office of Telecom, Bahraich. The witness has filed 20 annexures of the BSNL regarding SDE Sri Dukhenti Prasad, SDE regarding recovery of various amounts.

On 18-9-06 the cross examination of Sri Ram Charan, DE was adjourned to 22-11-06 but on 22-11-06 worker and his representative remained absent and therefore 29-1-07 fixed for argument. On 30-3-07, on the application of the worker the representative of the worker was allowed permission to cross-examine Divisional Engineer Sri Ram Charan at the cost of Rs. 200 but the worker did not pay the cost nor appeared for cross-examination or argument.

The representative of the opposite party has filed the written argument.

Heard representative of the opposite party and perused the evidence on record.

Worker has stated in his examination in chief on 20-4-06 that he worked as casual labour in Door Sanchar Vibhag, Bahraich w.e.f. 1-4-98 to 1-6-01. He has further stated that on 31-7-01 without any reason and without payment of salary for one month, opposite party stopped taking work. He has further stated that he has worked for more than 240 days in every calendar year. He has further stated that his work was to joint cables, digging pits, loging cables and maintaining batteries and exchange. He has further stated that he was getting Rs. 1000 and SDO use to pay him after obtaining the signature on the ACG-17. Later on his salary was increased Rs. 1500. He has stated that SDO was Sri A K Sawhney under him he was working.

In the cross-examination he has stated that his name was not forwarded by the Employment Exchange instead he himself went for service. He has denied any notification in the newspaper. He has stated that he has not taken any technical training. He has also stated that he did not get any appointment letter nor he was given written orders for working on different places. He has further stated that he used to receive wage slips on further question he stated that wage slips are with the department. He has admitted that he has not filed any certificate regarding his appointment alongwith statement of claim.

It is pertinent to mention here that in the statement of claim at para 4.2 worker has stated that he was engaged as casual labour in August 98 but when he appear for evidence on 20-4-06 he has stated that his date of engagement is 1-4-98. It is also pertinent to mention here that in the rejoinder the worker has stated at many places that he has been working as casual labour since 1997. In the circumstances it is difficult to believe that the worker own testimony that he was engaged by the opposite party on particular date. It is also pertinent to mention here that worker is graduate. He is not illiterate similarly the worker has stated in statement of claim that he was terminated on 31-7-01 but the his statement in court he has stated that he worked upto 1-6-01. Thus the worker is not trustworthy.

The Divisional Engineer Sri Ram Charan in his affidavit stated that department has sufficient number of different category of employees already available in the regular establishment who are discharging their duties efficiently and no extra work or extra post is available or vacant in the department at district Bahraich, therefore, there arises no question of claimant engagement as daily wager or casual labour. It is further stated in that in the year 1998 no vacancy was ever notified either in the newspaper, Employment Exchange or notice board. Therefore, there arises no any question and engagement of claimant as daily wager/casual labour as claimed by him. Sri Ram Charan has stated that the worker was neither appointed by the opposite party to any class IV post nor he was engaged as daily wager in 1998 as claimed by him.

Divisional Engineer Sri Ram Charan has specifically stated in para 6 of the affidavit that there was a complete ban on the engagement of fresh daily wagers/casual labours in the department w.e.f. June 1988, therefore, there arises no question of engagement of the worker as daily wager/ casual labour as claimed by him. He has further stated that there exists no master and servant or employee and employer relationship between the opposite party and workman and there arises no question of having worked in the department. It is specifically stated that worker being a stranger to the department can not be taken into employment. Since the worker has not worked a single day in the establishment then the question of working of 240 days does not arise. He has further stated that SDE was not competent to engage any daily wager/casual labour unless approved by the competent authority. He has specifically stated that SDE was not a competent authority and authorised officer to engage any person on daily wage basis. In case he has prepared some fabricated document showing engagement of some labours to give some undue benefit to them and his kith and kin, and also showing engagement of the worker and other persons as having worked as daily wager/casual labours, the deponent emphatically stated that the same are fabricated and manufactured documents. It is further stated that department imprest book does not contain names of labour etc. while claiming reimbursement on this count except expenditure, if any incurred on this count. Therefore, taking advantage to this SDE tried to get the expenditure reimbursed through imprest book which was found to be irregular, false and fabricated. It is further stated that such imprest book submitted by SDE showing fictitious payment

to the labours were under strict scrutiny and audit by the Accounts Officer of the opposite party and having found the same to be fabricated and ficitious and being falsely prepared to earn undue money from the department by irregular means, notices were issued to said SDE for recovery of disallowed amount from them. Photocopy of such recovery orders against the SDE as Annexure SA-1 to SA-20.

Sri Ram Charan has further stated that daily wager casual labour has no right to post continuation or regularization even without availability of work or post.

There is no question to disbelieve the testimony of Sri Ram Charan, Divisional Engineer, therefore, I come to the conclusion that the fact stated by Sri Shailendra Singh about engagement and termination are false. I also come to the conclusion that the document purported to be letter 13-6-01 paper No. 5/14 to be not genuine.

I also come to the conclusion that there is no master and servant, employer and employee relationship between the parties. Therefore there is no question of termination of Sri Shailendra Singh w.e.f. 31-7-01. Issue answered accordingly against the workman. Workman is not entitled for any relief.

Lucknow SHRIKANT SHUKLA, Presiding Officer
14-9-2007

नई दिल्ली, 24 सितम्बर, 2007

का. आ. 3074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, मुम्बई के पंचाट (संदर्भ सं. 2/101/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-9-2007 को प्राप्त हुआ था।

[सं. एल-12011/106/2000-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 24th September, 2007

S.O. 3074.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/101/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, which was received by the Central Government on 21-9-2007.

[No. L-12011/106/2000-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II AT MUMBAI

PRESENT:

A.A. Lad, Presiding Officer

Reference No. CGIT-2/101 of 2000

Employers in relation to the Management of

The Assistant Manager,
Bank of Baroda,
18th Floor, Stock Exchange Building,
Dalal Street, Mumbai-400001 ... First Party.

AND

Their Workman,
The Joint Secretary,
Bank of Baroda Employees
Trade Union Congress,
Flat No. 3, 79,
Hindu Colony, Dadar,
Mumbai-400014 ... Second Party

APPEARANCE

For the Employer : Mr. Lancy D'Souza & Mrs. Merlyn B. D'Souza, Advocates

For the Workman : Mr. M. B. Anchan, Advocate

Date of Reserving Award : 28th March, 2007

Date of Passing of Award I : 26th July, 2007

AWARD PART-I

The matrix of the facts as culled out from the proceedings are as under :

The reference is sent to this Tribunal by the Under Secretary of Central Government, the Government of India, Ministry of Labour by its Order No. L-12011/106/2000/IR (B-II) dated 12th October, 2000 in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 to decide :

> "Whether the action of the management of Bank of Baroda, Mumbai, in dismissing the service of Smt.. Asha Chanderkant Shenvi is justified and proper? If not, then what relief the workman is entitled to?"

2. To support the subject matter involved in the reference 2nd Party filed Statement of Claim at Exhibit 7 stating and contending that the concerned person Smt. Asha Chanderkant Shenvi is a Member of the Second Party Union which is affiliated to INBEF/INTUC. The INBEF is registered under the Trade Union Act, 1926 and is functioning in the Banking sector. She was on permanent roll of employment of the 1st Party. She started working with 1st Party as a Clerk-cum-Cashier in its C.P. Tank Branch from 14-12-1983 and served for 8 years on that post as a permanent employee. Initially she worked in the Saving Bank Department and thereafter transferred to Prathna

Samaj Branch in the same Department where she was assigned work of Dispatch Clerk from August, 1990.

3. While she was working as a Dispatch Clerk she had to look after the collection of Government forms. She was doing the work of Dispatch Clerk with the help of a Peon and one officer. According to Union as a matter of practice if someone is absent the 2nd Party Workman, involved in the reference, was asked to look after the work of the said absentee employee. In fact in her absence work of Dispatch Clerk was done by the Peon of the said Department. The Union further states that the 1st Party is a Nationalized Bank and has its registered office at the address mentioned in the title and more than 100 employees are working in the said office. The employees working with the 1st Party are governed by the Service Rules and the provisions of Chapter V-B of the Industrial Disputes Act, 1947 applicable to the employees of the Bank. Concerned workman was discharging her duties diligently and punctually.

4. On 5th July, 1991 said Workman was put under suspension during pendency of the enquiry. She was issued charge sheet dated 8-2-1992. The allegations of misappropriation of an amount of Rs. 31,721.50 were leveled against the concerned workman under Clause 19.5(j) of the Bipartite Settlement dated 19th October, 1996. The said charge was denied by the concerned workman vide her reply dated 24th February, 1992. Since 1st Party found that the said explanation was not satisfactory, the Disciplinary Authority appointed Enquiry Officer to conduct an enquiry on the charges leveled against concerned workman. Shri R.C. Almeida was appointed as an Enquiry Officer. Enquiry was held and Enquiry Officer submitted report holding workman as responsible and guilty of the charge of misconduct leveled against the concerned workman under Clause 19.5(j) of the Bipartite Settlement dated 19th October, 1996. According to 2nd Party Union, the enquiry conducted against the concerned workman was not fair and proper. She was not given the documents on which 1st Party relied to conclude and hold the 2nd Party workman guilty of the charges leveled against her. Besides Enquiry Officer did not allow her to be represented by her Advocate. Even the Enquiry Officer failed to consider her case that she was not paid the subsistence allowance during the period of her suspension and erred in holding the 2nd Party Workman guilty even in the absence of the payment of the subsistence allowances, which was required to be paid during the pendency of the enquiry. According to 2nd Party Union, Enquiry Officer has not given fair and proper opportunity to the 2nd Party Workman to participate in the enquiry. The Enquiry Officer did understand the procedure of the Dispatch Department and even did not follow proper procedure and help guiding 1st Party to lead the evidence to favour the 1st Party and convict the concerned workman. His finding was perverse and was not on the basis of the evidence lead by the 1st Party. Even appeal made by the concerned workman before the Disciplinary Authority was turned down without giving any reason. So it is submitted that enquiry be vitiated and findings given by the Enquiry Officer be declared not declared proper and given without following proper procedure. The Union also states that the decision taken by the 1st Party to terminate the services of the concerned workman is vague and the perverse finding is required to set aside with directions to 1st Party to reinstate her with benefits of back wages and continuity of service.

5. This prayer is disputed by 1st Party by filing Written Statement at Exhibit 9 making out a case that fair and proper opportunity was given to the concerned workman to participate in the enquiry. Before imposing the punishment, her explanation was called. Full opportunity was given to the concerned workman to participate in the enquiry with the help of his representative who has sufficient experience in conducting enquiries of this type. Full opportunity was given to the concerned workman and her representative to take part in the enquiry and participated in it. It is stated by the 1st Party that enquiry was conducted fairly and properly by following principles of natural justice. It is also stated that the finding given by the Enquiry officer is on the basis of the evidence lead before him and has sound grounds. It is denied that enquiry was not fair and proper. It is denied that, finding given by Enquiry Officer is perverse. It is denied that fair and proper opportunity was not given to the concerned workman. It is contended that the 2nd Party Workman herself initially decided to be represented through one Shri Pradeep Joshi, the Secretary of the Union, as her Defence Representative and thereafter by one Shri T.H. Naidu who was the General Secretary of her Union. The decision taken by the Enquiry Officer for not allowing the concerned workman to be represented through her Advocate was the decision relying on the rules and regulations. So it is submitted that the enquiry conducted was fair and proper and the findings given on it are not perverse. So it is submitted that the decision taken on the basis given by the Enquiry Officer of termination issue and looking the nature of the misconduct leveled on the concerned workman is just and proper.

5. In view of the above pleadings my Ld. Predecessor framed the Issues at Exhibit 12. Out of them Issue No. 1 is on the point of enquiry and Issue No. 2 is on the point of perversity of the findings which I answer as follows :

Issues	Findings
1. Whether the domestic inquiry conducted against the workman was as per the principles of natural justice?	Yes
2. Whether the findings of the Inquiry Officer are perverse?	No

REASONS

Issue Nos. 1 & 2 :

6. 2nd Party Union comes out with a case that the concerned workman by name Smt. Asha Chanderkant Shenvi was working with the 1st Party. Initially she worked in the Savings Bank Account Department of the 1st Party at their C.P. Tank Branch and then she was transferred to its Prathna Samaj Branch in Savings Bank Account Branch and was assigned the work of Dispatch. She worked for 8 years and was suspended during pendency of the enquiry on the allegations of misappropriation of an amount of Rs. 31,721.50. Charge of misconduct under Clause 19.5(j) of the first Bipartite Settlement dated 19th October, 1996 was leveled against the 2nd Party. According to 2nd Party Union the charge sheet was given by the 1st Party. Then enquiry was initiated. According to 2nd Party Union, enquiry conducted was a farce and it was not conducted fairly, properly and by following proper procedure. The main ground of the 2nd Party is that the concerned workman was not permitted to be represented through Advocate and finding is perverse. Whereas 1st Party made out case that just opposite to it, saying that, enquiry was fair and proper. Opportunity was given to the concerned workman to participate in the enquiry through her representative who was quite competent having much experience in that field. The finding given by the Enquiry Officer is on the basis of the evidence lead before him. He rightly observed concerned workman guilty of misconduct.

7. Second Party Workman in her affidavit filed in lieu of the examination-in-chief at Exhibit 16 narrated all the facts. In the cross she admits that :

> "9. It is correct I had received charge sheet dated 8-2-92 and that I was given opportunity to give my say to that charge sheet. It is correct my DR was Mr. Joshi who was then Secretary of Bank of Baroda Employees Trade Union Congress. It is correct said Joshi had represented many employees in the domestic inquiry. It is correct later-on I had engaged DR Mr. J.H. Naidu, who had also represented employees in the domestic inquiry earlier. It is correct said Naidu conducted many matters before the Courts on behalf of the Union.
>
> 10. It is correct bank had examined two witnesses and they were examined in my presence and my DR. It is correct bank had given me opportunity to produce my witnesses. Witness volunteers, my witnesses whom I was to examine were employees of the bank and that bank had brought pressure upon them. It is correct inquiry officer had summoned the witnesses whom I intended to examine. It is correct E.O. was bank officer. Not correct to say that I depose false that bank had pressurized my witnesses.
>
> 11. It is correct inquiry proceedings Exhibit 13/9-64 bears my signatures and that of my DR. It is correct I had received copies of the documents relied by the management. Not correct to say that bank had given me inspection of all documents.
>
> 12. It is correct that I received copy of the inquiry officers report and I was given opportunity to give say on that. It is correct bank had given me show cause notice on the proposed punishment. It is correct I was given personal hearing alongwith my D.R. It is correct I was given opportunity to assail the order of the Disciplinary Authority. It is correct my appeal was rejected by the authority."

In the said cross, concerned workman admits that every page of the enquiry proceedings bears her signature and she received copies of documents relied by the 1st Party. Even she admits, she received copy of the enquiry proceedings and its report and opportunity was given to her to submit her say on it. Even she admits that fair opportunity was given, show cause notice on the punishment was also given. She also admits that personal hearing was given to her alongwith her D.R. in the appeal.

8. Thereafter concerned workman closed her evidence by filing pursis at Exhibit 17 on the point of fairness of the enquiry and perversity of the findings. Against that, 1st Party lead evidence by filing an affidavit in lieu of the examination-in-chief at Exhibit 18 of one of its employee Mr. Robion C. Almeida who worked as an Enquiry Officer in the enquiry of the concerned workman and recorded evidence as well as gave finding on the enquiry. In the cross he states that the 2nd Party demanded assistance of legal assistance of her Advocate but he rejected that request. He states that except job rotation registers, all other documents were produced and made available to the concerned workman. He admits that investigation report was demanded by the concerned workman which was not made available. He also admits that he did not know whether the concerned workman demanded Green vernacular postage sheet voucher sheet and it was not produced by the 1st Party. When question was put before the Enquiry Officer that, whether Exhibits MES-1 and MES-2 were obtained from her by giving threats on which he replied that, initially concerned workman did not complain about those documents but after two months she made a complaint alleging that those documents were taken from her by force and when enquired from her, what type of force was used to which she was unable to reply. Even enquiry officer unable to pin point how she was concerned to write like that he also states that he referred the matter to the Senior Investigating Officer and even he passed remarks as per Exhibit A containing in red ink. 1st Party closed evidence by filing pursis at Exhibit 23. 2nd Party submitted written arguments at Exhibit 59 with a copy of decision of our Hon'ble High Court in Writ Petition

No. 2404 of 1991 (Bank of Baroda Vs. Prabhakar S/o Baburao Bokde and Anr.). Whereas 1st Party filed written submissions at Exhibit 61 with number of Xerox copies of citations at Exhibit 62 as follows :

1. Cipla India Ltd. Vs. Ripu Daman Bhanot & Anr. 1999 I CLR 1077—SC
2. K.G. Mhaiskar Vs. Bank of Maharashtra 1997 II CLR page 73 Bombay High Court
3. Harinarayan Srivastav Vs. United Commercial Bank & Anr.—1997 II CLR 16—SC
4. Vijay Kumar Nigam Vs. State of M.P. & Ors. 1997 (2) LLN585—SC
5. Tata Oil Mills Co. Ltd. Vs. Their Workmen 1964 (9) FLR 142—SC.
6. Laffons India Pvt. Ltd., Vs. Pancham Singh Rawat and Anr. 2002 III CLR p. 916 Bom. H.C.
7. Mahindra & Mahindra Ltd. Vs. Vijay Damodar Mehta & Ors. 2003 I CLR 998 Bom. H.C.

9. This is the first round of this litigation where we have to decide the point of fairness of the enquiry as it is to be noted that, serious charge of misconduct, which falls under Clause 19.5(j) of the First Bipartite Settlement dated 19th October, 1996, of misappropriation of Rs. 31,721.50 is leveled against the concerned Workman. She admits that, the charge sheet was served upon her and she replied to it. It is also a matter of record that, she participated in the enquiry through her representative. It is also admitted fact that, the witnesses were cross examined by defence representatives of the concerned Workman. Main grievance of the concerned Workman is that, she was not permitted to be represented through an Advocate. If we peruse the cross examination of the concerned Workman which is reproduced above, from there we find that, she admits that opportunity was given to her to participate in the enquiry with her representative who was Secretary of the Bank of Baroda Employees Trade Union. She also stated that, her said representative represents employees in the domestic enquiries also. She also admits that initially she engaged Mr. Naidu who was General Secretary of Union and was capable to represent her. She also admits that sufficient opportunity was given to her by the Enquiry Officer to lead evidence and cross examine the witnesses. Even she admits that, Enquiry Officer gave opportunity to examine her witnesses and those were employees of the Bank. She admits that, the Enquiry Officer summoned the witnesses but from the records it appears that, they did not turn up in favour of the concerned Workman. So I think, the grievance of the concerned Workman that, she was not permitted to be represented through Advocate and the witnesses called by her did not appear before the Enquiry Officer to defence her case has no meaning as in that case Inquiry Officer cannot do anything.

10. Besides, if we consider that, by not allowing 2nd Party Workman to be represented through her Advocate would lead to conclude that, fair opportunity was not given to her ? Here, in the cross-examination referred above, of the concerned Workman, reveals that, she was represented initially by Union representative Mr. Pradeep Joshi and then by Shri Naidu who were having sufficient experience to participate in the enquiries in such type of cases and they actually did. As far as caliber and qualifications of representatives who appeared for the concerned Workman is concerned, there is no doubt about them. Naturally the question arises, why concerned Workman is banging on non-availability of Advocate in the enquiry when she was represented by qualified Union representatives? No case is made out by the concerned Workman in that manner to show absence of Advocate affects the enquiry and it affected on it. It is not shown by which vacuum and blank benefit was given by the Enquiry Officer to conclude against her ? No explanation is given or nothing is quoted how not granting permission to her to be represented through her Advocate affect on her enquiry and if that facility might have been given to her to engage the Advocate how it helps her in such an enquiry? The ruling on which the 2nd Party placed reliance is of Writ Petition No. 2404 of 1991 (Bank of Baroda Vs. Prabhakar S/o Baburao Bokde). In that no such a similar situation arose. In that case (Supra) there were allegations of cheating, conspiracy and fraudulent activities at the hands of the concerned workman. Those allegations were of criminal nature. Whereas in the instant case charge of misappropriation of Rs. 31,721.50 is leveled against the concerned Workman. But it is not made out in what way said citation will help the concerned workman to come out from the charges as shown in the above referred case (supra)? Moreover, he was represented by Union and qualified trade Union representatives who were not only the Union leaders but had lot of experience in conducting enquiries of this type. When that facility was available then why she should insist to have an Advocate ? When first Party is not represented by an Advocate, which may call as an equivalent rights with equal power and strength, when first Party was represented by legal representative then why concerned Workman require help of a legal representative and Counsels? No specific case is made out. Nothing is pointed in what manner the presence of the Advocate may make difference in conducting this type of enquiry? The decision given by the Apex Court on which 1st Party relied published in SLR 1963-64(XXV) F.J.R. page 88 SC while deciding case of Sur Enamel and Stamping Works Ltd. Vs. Their Workmen observed that, the domestic enquiry in the misconduct cannot be said to have been properly held unless (i) the Workman proceeded against has not been clearly informed of the charges leveled against him, (ii) his witnesses are not examined, (iii) fair opportunity is not given to the Workman to cross examine the witnesses, (iv) fair and proper opportunity is not given to Workman to examine witnesses including himself in his

defence, if he so wishes and (v) the enquiry officer records his findings without reasons. In the instant case all these five points are there in the enquiry and this enquiry cannot be observed not fair and proper. Then decision of Apex Court while deciding case of (Cipla Ltd. & Ors. Vs. Ripu Daman Bhanot & Anr.) published in 1991 I CLR page 1077 where Apex Court observed that, merely because assistance of an advocate to defend was not granted to Workman, does lead to conclude that, the enquiry was not fair and proper. Even our Hon'ble High Court while deciding the case of K.G. Mhaiskar Vs. Bank of Maharashtra published in 1997 II CLR page 73 observed that, if the legally trained representative represents the Workman, is sufficient to conclude that, fair and proper opportunity was given to the Workman to represent in the enquiry. In the case of Harinarayan Srivastav Vs. United Commercial Bank & Anr. published in 1997 IICLR page 16 Apex Court observed that, only because permission to defend by an Advocate in the enquiry is refused it does not mean that, enquiry is not fair and proper and has violated the principles of natural justice. I do not find any reason to rely on the citation Supra produced by the 1st Party published in 1997(2) L.L.N. page 585 [Vijay Kumar Nigam (dead through LRs) Vs. State of Madhya Pradesh & Anr.], (Tata Oil Mills Co. Ltd. Vs. Their Workman) published in 1964(9) FLR page 142 SC), (Laffons India Pvt. Ltd. Vs. Pancham Singh Rawat & Anr. published in 2002 I CLR page 998. So from all this I find that fair and proper opportunity was given to the concerned workman to participate in the enquiry which was represented by qualified representatives and conclude that the enquiry was fair and proper.

11. As far as finding of the Enquiry Officer is concerned 2nd Party is insisting to concluding finding perversity. I am unable to point out why I should conclude that the finding is perverse? The annexure of the 1st Party with Exhibit 13 and some of its pages are not readable and the proceedings of the Inquiry Officer relied is also not readable.

12. If we peruse the findings at Exhibit 49, from internal page 154 it is narration of the enquiry as to in what manner it happened. The examination-in-chief of the concerned workman is from internal page 160 and then from internal page 164 is finding where he pointed out that foreign mail posted was mentioned in wrong addresses, wrong alphabetic, wrong PIN Code with intention to mislead Bank. One Mr. Sawle was examined before the Enquiry Officer on that point to confirm it who in the cross this explained before the Enquiry Officer how he noticed the discrepancies in the postage account and shown the entries made in the register. Allegations regarding increase of outward foreign mail were entered in the postal register to misappropriate the Bank amount on the allegations of affixing the postal stamps on the charge of increase to the outward mail made in the outward register are justified and discussed by the Inquiry Officer from internal pages 1 to 4. So all this will not permit anybody to conclude that the finding is perverse or has no basis or is beyond the facts available before the Enquiry Officer.

13. So if we consider all, coupled with evidence available with the Enquiry Officer I conclude that the enquiry is fair and proper and finding not perverse. Accordingly I answer the above Issues to that effect and passes the following order :

ORDER

(a) Enquiry is fair and proper;

(b) Finding not perverse

(c) Both parties to appear in this Reference on the point of quantum of punishment.

Mumbai, A.A. LAD, Presiding Officer
26th July, 2007

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3075.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, नासिक के पंचाट (संदर्भ सं. 16/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/206/1998-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/1999) of the Labour Court, Nashik as shown in the Annexure, in the Industrial Dispute between the management of Dena Bank and their workmen, which was received by the Central Government on 25-9-2007.

[No. L-12012/206/1998-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI M. M. AGRAWAL, PRESIDING OFFICER, LABOUR COURT, NASHIK

Reference I.D.A. No. 16/1999

Between :

The Assistant Manager,
Dena Bank, Regional Officer,
Cavas Arcase, Shivaji Road,
Nashik (Maharashtra) ... First Party

AND

Shri Murlidhar W. Dhage,
C/o Pandharinath W. Dhage,
Pushpa Sadan, near Shintre Bunglow,
Shriramwadi, Ghoti, Tal-Igatpuri,
District : Nashik. ... Second Party

AWARD
(28-8-2007)

This is a reference sent to this Court by the Government of India, Ministry of Labour, New Delhi under Section 10 of the Industrial Disputes Act, 1947 for adjudication of the dispute whether the action of the management of Dena Bank in relation to its Regional Office, Nashik in dismissing the services of Shri Murlidhar W. Dhage, cashier-cum-clerk w.e.f. 9-2-1996 is legal and justified and if not, what relief the workman is entitled to?

2. After receipt of the reference, notices were issued to both the parties (Ex.O-2 to O-4). The second party filed his statement of claim at Ex. U-3 and the first party filed written statement at Ex. C-4. On the basis of rival contentions of both the parties, my learned predecessor framed issues at Ex.O-7. The issue No. 1 is about the fairness of enquiry. Both the parties requested to decide the issue No. 1 as preliminary point. Hence, after hearing both the parties, the issue No. 1 which is about fairness of enquiry is decided by the order dated 14-3-2007 holding that the enquiry held against the second party is fair and proper. Thereafter the matter was adjourned from time to time i.e. on 13-4-2007, 8-6-2007, 6-7-2007, 25-7-2007 and 30-7-2007. But the second party did not adduce any oral evidence on the remaining issues. Therefore, it appears that he is not interested in conducting the case. Since he has not adduced any evidence, in my opinion he is not entitled to any relief including reinstatement and back wages. Hence, the reference is rejected. The award be sent for publication to the Desk Officer, Government of India, Ministry of Labour, New Delhi.

Nashik
Dated : 28-8-2007 M.M. AGRAWAL, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3076.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 26/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2007 को प्राप्त हुआ था।

[सं. एल-12011/53/2004-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2004) of the Central Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, which was received by the Central Government 25-09-2007.

[No. L-12011/53/2004-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R. G. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 26 of 2004

In the matter of dispute between :

State Divisional Secretary,
Bhartiya Mazdoor Sangh,
Uttar Pradesh,
Navin Market,
Kanpur

AND

The Regional Manager,
Bank of Baroda,
Maya Bazaar,
Dev Kali Road,
Reedganj,
Faizabad

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide notification No. L-12011/53/2004/IR (B-II), dated 31-5-2004 has referred the following dispute for adjudication to this tribunal :—

> Whether the action of the management of Bank of Baroda, Faizabad in terminating from service to Shri Anil Kumar Pandey son of Sri Ram Kishore Pandey Daily wages peon w.e.f. 14-8-03 is legal and justified? If not to what relief the workman concerned entitled to?

2. It is totally unnecessary to give full facts or the case as after exchange of pleadings between the parties neither the workman nor the representative representing the workman has attended the proceedings of the case before this Tribunal. As a result of the same vide order dated 21-8-07, the workman was debarred from evidence by the Tribunal. The representative for the management also submitted before the tribunal that they do not want to adduce any evidence.

3. Therefore, virtually it is a case in which no evidence is available from the side of the contesting parties. It is settled law that it is the workman upon whom burden lies to prove his case and since the workman has palpably failed to discharge his obligation in proving his case before the tribunal, the tribunal has no hesitation to hold that the concerned workman cannot be held entitled for any relief as claimed by him.

4. Accordingly reference is bound to be answered against the workman for want of evidence and it is held that the claim of the workman is liable to be rejected. As such the same is rejected and it is decided that workman is not entitled for any relief pursuant to the reference made to this tribunal.

R.G. SHUKLA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3077.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 10/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2007 को प्राप्त हुआ था।

[सं. एल-12011/253/2002-आई. आर. (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2003) of the Central Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, which was received by the Central Government on 25-09-2007.

[No. L-12011/253/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

PRESENT:

SRI R.G. SHUKLA, H. J. S.

Industrial Dispute No. 10 of 2003

In the matter of dispute between :

General Secretary,
Bank of Baroda Staff Association
Central Office Madhav Bhawan,
15/222-A, Civil Lines,
Kanpur-208001.

AND

The Regional Manager,
Bank of Baroda,
Varanasi Region,
177/1 Assi Road Lanka,
Varanasi

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide notification No. L-12011/253/2002-IR (B-II), dated 22-04-03 has referred the following dispute for adjudication to this tribunal :—

> Whether the action of the Management of Bank of Baroda, (Transfree Bank of erstwhile Benaras State Bank Ltd.) in not including the name of Sri Om Prakash Malviya Data Entry Operator in pension optee list for pensionary benefits as per the pension scheme of the Bank is legal and justified? If not what relief the workman is entitled?

2. It is common ground that the workman was posted at Katra Branch of the Bank at Allahabad. It is also common ground between the parties that the erstwhile Benaras State Bank Limited introduced pension scheme in the bank and circulated the same vide their circular. The scheme is known as Benaras State Bank Ltd. Employees Pension Regulations, 1993 which was made effective from 1-11-93, by means of which pension options were invited from the employees of the erstwhile Benaras State Bank Limited on prescribed format latest by 30-9-94. The last date however was extended by the bank vide their Circular No. Cir/Staff/77/95-96 dated 19-1-96 inviting application latest by 31-3-1996.

3. The case of the workman in short is that in response to the bank's circular dated 19-1-96, he applied on prescribed format for pension on 20-3-96 still his name could not figure in the list of pension optees circulated by the erstwhile Benaras State Bank Limited circulated on 12-12-2001. The main grievance of the workman is that he represented the matter vide his application dated 19-1-2002 followed by another representation dated 28-1-2002. It is also pleaded by the workman that the then Branch Manager also wrote to the head office of the bank on 28-1-2002, but the same were not considered by the bank nor his name was included in the list of pension optees. It has been pleaded by the workman that the action of the bank in not including the name of workman in Pension Optees List is illegal and unjustified which is liable to be set aside and has prayed that the bank be directed to include the name of the workman in the list of pension optees.

4. The opposite party bank has filed a detailed reply. The crux of the reply is that the workman never opted pension scheme nor any such application was received by the bank in response to their circular dated 19-1-96 therefore question of considering the name of the workman in the list of pension optees does not arise at all.

The letter dated 28-1-2002 is a forged one which is purported to have been sent by the then branch manager of Katra Branch of the bank at Allahabad. There is no illegality in the action of the management and the claim of the union is liable to be dismissed being devoid of merit.

5. After exchange of pleadings between the parties both contesting parties have filed documentary evidence whereas workman has examined himself as W.W. 1, bank has examined its witness a bank officer as M.W. 1.

6. Tribunal has heard the arguments of contesting parties at length and has perused the records of the case carefully.

7. A very short question is involved in the case for decision. From the pleadings and evidence of the parties it will be seen as to whether or not the workman has ever opted for pension scheme and it will also be seen that the action of the bank in not including the name of the workman in the list of pension optee is legal or not.

8. It is the case of the workman that he applied for pension on prescribed format to the branch manager on 20-3-96. In support of his case the workman himself has examined on oath before the tribunal and has also filed carbon copy of letter dated 28-1-2002 purported to have been written by the then branch manager. Whereas contrary to the claim of the workman, the stand of the bank is that the workman never applied for pension nor any such application was ever received by the head office of the bank which could have been considered by the bank. The evidence on the point lead by the workman cannot be believed specially when it is the constant case of the bank that they never received any such application from the branch. Mere filing of carbon copy of a letter dated 28-1-02 alleged to be signed and sent by the then branch manager of the bank would not be sufficient to believe the case of the workman as the workman has never tried to summon the signatory of the letter dated 28-1-02 to prove the same specially when in written statement of the bank it is stated that there are some manupulations. A perusal of letter dated 28-1-2002 is quite indicative of the fact as to who was the then branch manager and what was the name of that person is not known to the workman otherwise he must have disclosed these facts in his statement of claim. In the absence of clear and categorical statement of signatory of letter dated 28-1-02, the claim of the workman that his name was forwarded for including his name who opted for pension cannot be accepted. The burden was shifted upon the worker to establish his assertion when the bank contended that manipulations were made by preparing the impugned letter.

9. On the contrary the case of the opposite party bank appears to be sound. There is no allegation of mala fide against the bank and inview of it one can hardly believe as to why the bank would not have included the name of the workman if actually the workman had exercised his option on prescribed format within stipulated period provided in the circular dated 31-3-96. From this point of view the Tribunal is unable to believe the testimony of the workman. The bank has been able to substantiate his claim by adducing evidence and showing satisfactory reasons for not including the name of the workman in the list of pension optees which admittedly contains names of about 570 employees of the bank barring the name of the workman. The opposite party bank has also filed Pension Regulations and list of pension optees.

10. In view of position explained above, the tribunal is of the firm view that the workman never exercised his option within the prescribed time as provided in circular dated 19-1-96. Tribunal in these circumstances feels no hesitation in holding that the document dated 28-1-02 purported to have been written by the then branch manager is a manufactured document and cannot be given any weight.

11. For the reasons discussed above, it is held that the bank has committed no illegality if bank did not include the name of the workman in the list of pension optees, therefore, no direction can be given to the bank as has been prayed by workman in his statement of claim and his claim is liable to be dismissed which is accordingly dismissed.

12. Reference is answered against the workman and in favour of the Bank.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3078.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 70/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2007 को प्राप्त हुआ था।

[सं. एल-12012/309/1999-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3078.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2000) of the Central Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, which was received by the Central Government on 25-09-2007.

[No. L-12012/309/1999-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R. G. SUKLA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 70 of 2000

In the matter of dispute between :

Sh. Jaipal son of P. Lal
Village Augana
PO Banipara
Kanpur

AND

Bank of Baroda
Regional Manager BOB Gumti No. 5
Kanpur.

1. Central Government, Ministry of Labour, New Delhi, vide notification no.L-12012/309/99/IR(B-II) dated 25-5-2000 has referred the following dispute for adjudication to this tribunal :—

> Whether the action of the management of Bank of Baroda in terminating the services of Sri Jaipal w.e.f. 2-11-1998 is legal and justified ? If not,what relief the concerned workman is entitled to?

2. Briefly stated facts of the case as set by the workman in his statement of claim are that on 12-1-95, the workman was appointed in subordinate staff and continued to work as such till 1-11-96, whereafter his services were terminated illegally w.e.f. 2-11-96 without there being any written orders. He was appointed by the bank at its Mall Road Branch, Kanpur. It has been pleaded by the workman that the bank used to take work of peon from him which is of regular nature and still exits. On account of unfair labour practice the bank used to pay the remuneration weekly against sundry charges accour.t. Bank also used to prepare payment vouchers in the name of others with a view to deprive the workman from regular and permanent status of an employee. It has also been alleged that the workman from January 95 to 1-4-96 has completed 240 days of service and as a device of unfair labour practice he was paid his wages in different names and at the back of such vouchers signatures are in the hand writing of the workman. Workman has further pleaded that he was paid weekly wages for the period 12-1-95 to 1-11-96 still he was removed from the service of the bank and at the time of removal notice, notice pay or retrenchment compensation was not given to him by the bank which violates the provisions of Section 25-F of Industrial Disputes Act, 1947. At the time of removal of his services persons junior to him were retained by the bank who too were paid their wages in the same fashion in which workman was paid, therefore, the action of the bank is in violation of the provisions of Sec. 25-G of Industrial Disputes Act, 1947. After termination of the services the bank appointed fresh hand by name Rajnu Bajpai thus provisions of section 25H of the Act has also been violated by the bank. Lastly it has been pleaded by the workman that the action of the bank is neither justified nor legal therefore, he is entitled to be reinstated in the service of the bank with full back wages, seniority and all consequential benefits.

3 Opposite party bank contested the claim of the workman by filing a detailed reply on variety of grounds inter alia alleging therein, that the reference order is bad in law therefore, not capable of being adjudicated hence is liable to be rejected ; that order of reference suffers from misjoinder and non joinder of necessary parties inasmuch as the branch manager Mall Road Branch of the bank has not been impleaded as party. It has been denied by the bank that workman was ever appointed by them on any post, therefore, question of his termination does not arise at all; that being a public sector organisation appointments in sub staff cadre are made after inviting applications from Employment Exchange and after following the prescribed selection procedure; that as the workman was never appointed by the bank he is not a workman within the meaning of Section 2 (s) of I.D. Act; however it has been admitted by the bank that the workman was engaged by the Branch Manager, Mall Road Branch, Kanpur, for purely casual specific work as labour in the Month of April 1995 for six days only for which he was paid agreed labour charges. Workman has been paid his entire wages for the work he has done and nothing is due to him; that bank is a public sector organisation and no one has any personal interest to do unfair labour practice; that as the workman was never appointed against any post question of violation of the provisions of Industrial Disputes Act, does not arise at all and the workman is trying to seek back door entry in the service of the bank; that at bank's Mall Road Branch only two sanctioned posts are there at the relevant time against which Sohan Lal was working as peon and Dharmpal was working as Daftary on permanent basis; that it has emphatically been denied by the bank that workman had ever completed 240 days of continuous service in the bank; applicant has no right or lien against any post in the bank therefore, question of termination of his services does not arise and lastly it has been pleaded that the bank never appoints any person as peon on any post without any authority and without adhearing to selection procedure, therefore, the claim of the workman is liable to be dismissed.

4. Rejoinder statement has also been filed by the workman but nothing new has been pleaded by him except reiterating the facts already pleaded in his statement of claim.

5. After exchange of pleading between the parties apart from filing of documentary evidence workman examined himself as W.W.1 whereas management examined its witness.

6. Tribunal has heard the argument of the contesting parties at length and have also gone through the record of the case carefully.

7. The tribunal vide order dated 12-6-03 rejected the application of the workman by means which he has sought certain documents in original from the management and the workman was directed to prove his case by secondary evidence. Except oral testimony of the workman no other cogent evidence is available on the record to corroborate the statement of the workman made on oath before the tribunal, therefore, the oral evidence of the workman is of no help to him. Photocopies of documents filed by the workman cannot be read as evidence. Thus virtually it would mean that the workman has failed to substantiate his claim before the tribunal. It is settled legal position that it is the workman who is required to establish the fact that he had worked for over 240 days continuously in one calendar year before termination of his services. Since he has failed to discharge his obligation, tribunal is not inclined to believe the case of the workman.

8. The opposite party bank has filed original payment voucher dated 29-4-95 which is indicative of the fact that the workman was paid Rs. 120/- for certain work done by him. Opp. party in their reply has admitted the fact that the workman has worked only for six days as casual worker, but this will not be sufficient to believe that the workman was ever appointed by the bank or had ever worked in the bank as has been claimed by him in his statement of claim.

9. It is also settled position of law that a casual employee has no right to claim appointment on regular basis. Even otherwise the Labour Courts/Industrial Tribunals should not be used as a measure for seeking back door entry in public employment. For securing public employment one has to follow the procedure laid down under recruitment rules of the public organisation. In the absence of the same one cannot be held entitled for the relief of reinstatement by Labour Courts/Industrial Tribunals.

10. In the instant case it has been admitted by the workman that he was engaged on daily rated employee and his wages were being paid by the bank weekly. If it is so the workman shall be deemed for all intent and practical purposes that he was a casual labour engaged for certain period on daily rate basis therefore no right in his favour would be deemed to have accrued.

11. Having concluded that the workman was a casual labour his claim that he was terminated from service by the bank in violation of the provisions of I.D. Act, cannot be believed and therefore provisions of the Act will have no application in his case, nor any protection thereof can be granted to the workman.

12. For the reasons discussed above, it is held that the action of the management of Bank of Baroda as referred in the schedule of reference order is legal and justified. Workman will not be entitled for any relief as claimed by him and accordingly his claim is liable to be rejected and is rejected accordingly.

13. Reference is answered accordingly.

R.G. SHUKLA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3079.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 149/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/223/1991-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3079.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 149/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 25-9-2007.

[No. L-12012/223/1991-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI SANT SINGH BAL, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, NEW DELHI

I.D. No. 149/91

In the matter of dispute between :

Shri Kalicharan/Kalicharan Sharma,
S/o Late Shri Ram Chander,
R/o WS-75, Sudama Puri,
Bhagat Singh Gali, Babarpur,
Shahdara-110032. ... Workman

Versus

Zonal Manager,
Union Bank,
Zonal Office,
Connaught Circus,
New Delhi-110001. ... Management

APPEARANCES

Shri J. Buther for the workman

Shri Pawan Behl A/R for the management

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/223/91-IR (B-II) dated 22-10-91 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Union Bank of India, New Delhi imposing the punishment of discharge from services on Shri Kalicharan vide order dated 3-5-90 is justified ? If not, to what relief the workman is entitled to ?"

2. Brief facts of this case giving rise to the instant reference as culled from the record are that the workman Shri Kalicharan was employed on permanent basis with respondent management and that he was awarded punishment of dismissal without notice and warning for misconduct by E.O. vide order dated May 3, 1990 on the basis of charge sheet dated 28-2-90 on the allegations that he was working at the receiving cash clerk counter on 7-8-89 and while so working he prepared a packet of currency note of 100 rupees denomination and on recounting on 8-8-89 by Shri S. S. Grewal Clerk cashier it was observed that the packet contained only 98 notes of 100 denomination and thus shortage of two notes of hundred was detected in this packet which contained only 98 notes then again on 3-8-89 and on 7-8-89 shortage of one note of Rs. 100 denomination each was detected in the packets prepared by him and this packet contained only 98 notes of 100 denomination and he was called to show cause but his reply was not found satisfactory. He was charged vide memo dated 28-2-90 for doing acts prejudicial to the interest of the bank minor misconduct and negligence in performing duties and an enquiry was initiated and thereafter during enquiry he initially contested the charge by filing reply. On conclusion of enquiry he was found guilty of the charges leveled against him and was awarded punishment of dismissal from service without notice. The E.O. made recommendation for awarding punishment and the Disciplinary Authority on consideration awarded the punishment of dismissal without notice and warning to the workman for minor misconduct vide his order dated 3-5-90 against the said order. The workman challenged the order of enquiry officer by filing an appeal which was also dismissed. The workman has assailed the procedure of the enquiry as well as order of punishment on the ground as bad in law and contrary to the bipartite settlement between the respondent and the workman from time to time and the allegations against him were vague and the whole enquiry was concluded with predetermined mind and in violation of natural justice, the findings of enquiry officer are perverse, the order is unjustified and unlawful as the matter is very trivial, the alleged shortage of two notes in a packet in course of routine is very trivial and routine matter. This is act of minor misconduct and punishment afforded is shocking and has been passed ignoring his acts exemplary honesty in the past refunding excess cash tendered by the customers of the bank and also handing over to the Bank a box full of jewellery which was lying unnoticed. The Enquiry Officer also erred in taking into account the past penalty of stoppage of three increments awarded to the workman vide order of 4-4-88 for routine cash shortage of Rs. 10,000 occurred in cash on 5-8-86 which was reported by the workman to the branch manager. The enquiry officer also erred in not taking into account the fact that no loss was caused and that the penalty imposed at that time also by the same enquiry officer was unlawful and he ignored that there was not any dishonest motive. The present penalty is unlawful and beyond the jurisprudential dimensions of disciplinary proceedings and without any authority. The workman is only non-matriculate and was working as domestic servant prior to joining bank service in 1984. It is further alleged that the punishment of dismissal for a shortage of Rs. 200 of routine nature the workman was awrded with the penalty of dismissal which was disproportionate and discriminatory as some other employees such as Hardyal Singh, Bharti Ram were awarded lesser punishment of stoppage of increments for a cash shortage of 55 notes and 48 notes of Rs. 100 respectively and Shri D. V. Chaturvedi and Shri Madan, Cashier of Kashmere Gate were not awarded any penalty for cash shortage of 85 notes of Rs. 100 in 17 packets. There are other such numerous cases of apparent dishonesty also and the workman is only singled out for such harsh punishment for a cash shortage of routine nature admittedly resultant to negligence of minor nature. Order of punishment passed by the Disciplinary Authority is bad in law and is non-speaking unreasonable and without application of mind and moreover is very harsh and is equivalent to like death penalty and resulted in total ruination of the workman and his family and is shocking and is also in violation of Section 25 F of the I.D. Act suffers from inconformity as this is not by way of disciplinary action in terms of provisions of Bipartite Settlement. In view of the above submissions the workman requested to set aside the impugned order of punishment during enquiry and confirmed by the Appellate Authority claiming reinstatement with back wages and continuity of service.

3. Claim has been contested by the management by filing written statement taking preliminary objections that the application is misconceived because the workman has admitted the charges against him and has not disclosed this fact.

4. On merits it is not disputed that the claimant who was working as cash clerk employed with the respondent as stated. It is stated that the management issued charge sheet, initiated conducted proper enquiry against the

claimant. During enquiry he initially denied the allegations (charge) but later on 23-4-90 he admitted the charge/ (allegation) in presence of his defence representative Shri Arvind Kumar Gupta, Assistant Secretary . As per charge sheet there were two charges of misconduct :

(1) Gross misconducts :

(2) (i) During acts prejudicial to the interest of the bank.

(ii) Minor misconduct : Negligence in performing duties. Order of dismissal without notice was passed on the basis of major charge of misconduct. Other grounds are denied. The workman is habitual in conducting gross misconduct. All the laws and facts were considered at the earlier and present occasion. Other allegations are also denied. It is further stated that the workman was afforded personal hearing and was heard fully and the appeal was decided by the Appellate Authority on merits. Taking into consideration all the facts on record as per law. The claim is sought to be dismissed. It is denied that there has been any discrimination amongst the employees in the matter of punishment.

5. Written statement was followed by rejoinder wherein controverted facts and the submissions made by the management in the written statement were refuted and averments made in the claim statement were reiterated to be correct.

6. Thereafter the following issues were framed in this reference on 12-10-92 :

(1) Whether the domestic enquiry conducted against the workman is fair and proper ?

(2) As in the terms of reference ?

7. Parties adduced evidence. Management examined Shri Suman Lal Verma as MW1 and proved his affidavit as MW1/1 and was cross examined. Thereafter workman examined himself as WW1 and proved his affidavit as Ex. WW1/1 and cross examined. He has also placed on record documents and closed his evidence.

8. After closure of the evidence A/R for the workman Shri J. Buther and Shri Pawan Behl A/R for the management addressed argument.

9. Mr. J. Buther A/R for the workman has contended that the workman has not committed any misconduct and there has been shortage in some bundles of currency not of 100 which is not culpable negligence or culpable offence and that the workman has been honest and at many occasions he has returned cash payment made by the customers excess amount of money given by the customer for depositing and that there has been a discrimination in the matter of punishment in awarding punishment as many other employees named in the claim statement were given no or lesser punishment of similar and none serious allegation shortage of currency notes. The punishment is too harsh and the order of discharge is not legal and liable to be set aside.

10. On the contrary the above contentions have been refuted stating that the workman is negligent and the shortage of currency notes in the bundles proposed by him have been noticed on many occasions i.e. at least four occasions, which are mentioned in the charge. The shortage in the currency notes again and again indicates that the intention of the workman to return excess money to the customer is not correct. Letter of dismissal is procured one and punishment given is not disproportionate to his acts of Major Misconduct. Admission about shortage made by the workman is voluntary not procured one as stated.

11. I have given my thoughtful consideration to the contentions and submissions and perused the record meticulously.

12. The workman in this case was charged vide charge sheet dated 28-2-90 for acts which are as under :

(1) Gross misconduct doing acts prejudicial to the interest of the Bank.

(2) Minor misconduct : Negligence in performing of duties on allegations contained in memo dated 14-12-89 wherein it was mentioned that the workman Shri Kalicharan prepared one packet of 100 rupees on 7-8-89 while performing his duty and on 8-8-89 on recounting by H. S. Grewal Clerk-cum-Cashier it was observed that the packet contained only 98 notes of 100 rupees denominations instead of 100 notes and thus there was shortage of two notes of Rs. 100 each. This packet bore signatures of Kalicharan Sharma with date affixed thereon. In this memo it is further alleged that on 3-8-89 and again on 7-8-89 shortage of one note of 100 denomination each was detected in packets prepared by Kalicharan Sharma on different dates and he was asked to show cause within 15 days about the shortage. On consideration of his reply it was deemed proper to initiate enquiry against him and the above charge was leveled so it cannot be said that the charge of misconduct in any way was vague or that the workman was unable to understand the nature of the charge on the face of it and to defend himself in the enquiry.

13. The other contention that the shortage detected in the currency is not accompanied with culpability or (any guilty intention) is not punishable at least with the dismissal. It may be stated that it is proved on record that it is not single instance of shortage of currency note attributed to the workman. In the memo accompanied with the charge-sheet three instances of shortage of notes i.e. two notes of 100 denomination on 8-8-89 and shortage of one note of 100 denomination each was detected on 3-8-89 and 7-8-89 and workman also admitted in his claim statement that earlier also he was punished for shortage of Rs. 10,000 which occurred on 4-4-88 vide order dated 4-4-88 and his three increments were withheld. Thus the shortage due to the counting of notes on the solitary occasion may be ignored as minor misconduct (mistake) but if it occurs again and again on many occasions it casts repercussion on the capability of the charged employee (workman) certainly amounting to an act prejudicial to the interest of the bank which in my opinion is major misconduct. The acts of minor misconduct repeated again and again certainly loose the label of minor misconduct rather in my opinion it becomes gross misconduct. In respect of the contention of the A/R of the workman that the negligence of the workman is not culpable and as such he does not deserve the punishment of dismissal it may be stated that the workman herein was not doing any function of the nature of quasi-judicial adjudication. He was only working as cash clerk at cash counter of the Bank preparing bundles of currency notes. In the decision reported in 1999 (7) Supreme Court cases 409 captioned as Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others relied upon by the workman observations that negligence in quasi-judicial adjudication is not carelessness, inadvertence or omission but a culpable negligence was made in respect of the conduct of Collector/ Commissioner, Central Excise, Nagpur who functioned as quasi-judicial officer while making assessment orders. The facts of that case are quite distinguishable and not applicable to the instant case. It is further pertinent to note the apex Court in para 17 of the aforesaid judgement has quoted with approval the following observation made in paras 28 and 29 of the decision reported in S. Govinda Menon Vs. U.O.I. AIR 1967 SC 1274 : (1967) 2 LLJ 249 (SCC p. 67, paras 28-29)

> "28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a judge. Accordingly the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases :
>
> (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
>
> (ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;
>
> (iii) If he has acted in a manner which is unbecoming of a government servant;
>
> (iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
>
> (v) If he had acted in order to unduly favour a party;
>
> (vi) If he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago though the bribe may be small, yet the fault is great.
>
> 29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

As per para 28(iv) the disciplinary action can be taken against an official for violation of conduct rules if he has acted negligently or ..... . In the instant case the workman admittedly acted negligently again and again in preparing the bundles of currency notes which were detected to contain currency notes less than 100 in performance of his duties assigned to him as cash clerk at cash counter. The claimant herein has been negligent not on solitary occasion but on many occasions and as such his negligence in preparing short bundles has snowballed into gross negligence indicating his incompetence to act as cash clerk. As per his own averments in his claim statement, he is not properly qualified and was only a domestic servant prior to appointment in the Bank. Thus in my opinion he is not qualified and competent to function as cash clerk and his retention in service will not serve the interest of the Bank, rather will affect its interest adversely and prejudicially.

As regards to the other contention that the workman was coerced or induced to admit the charge it is pertinent to mention that the workman initially denied the charges but later on he admitted the allegations leveled in the charge sheet dated 28-2-90 before the E.O. in Enquiry proceedings

dated 23-4-90 to memo dated 14-12-89. Admittedly he has not mentioned in his claim statement that he was so induced nor he suggested to the E.O. Shri S. L. Verma when examined in the court as MW1. This plea though taken in appeal appears to be afterthought.

He was asked to file reply and after reply dated 2-1-90. Charge was framed. He denied the charges initially but later on he admitted the charges of misconduct during enquiry proceedings on 23-4-90. The Enquiry Officer recommended punishment for discharge for misconduct and warning for minor misconduct on repeated acts of negligence amounting to acts prejudicial to misconduct, D.A. confirmed the punishment.

Taking into consideration the incompetence of the workman due to acts of negligence in preparing bundles containing short currency notes as mentioned above the punishment of discharging the workman from service cannot be termed as disproportionate in any manner. In view of the above discussion I do not find any infirmity in the order of punishment of the disciplinary authority and confirmed by the Appellate Authority. The alleged acts of honesty claimed to have been done by C.S.E (claimant) though not admitted by the respondent also render no help to him in view of the above finding that he (workman) is not capable to handle cash and discharge duty at the cash counter and fit to be kept in service. Workman is not entitled to any relief and the action of the management in imposing punishment of discharging the workman from service is in my opinion justified and legal. Award is accordingly passed. File be consigned to record room.

Dated : 28-8-07 SANT SINGH BAL, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3080.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैण्टोन्मैन्ट बोर्ड के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 13/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-9-2007 को प्राप्त हुआ था।

[सं. एल-13012/3/2005-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3080.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 13/2006) of Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Cantonment Board and their workman, which was received by the Central Government on 26-9-2007.

[No. L-13012/3/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Shri H. A. Hazarika, Presiding Officer, CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 13 of 2006

In the matter of an Industrial Dispute between :

The Management of Cantonment Board, Shillong

Vs.

Their Workmen Smt. Shaloo Singh, Shillong

APPEARANCES

For the Management : Mr. R. Deb Nath, Advocate

For the Workman : Smt. Poonam Yadav, Advocate

Date of Award ; 18-9-2007

AWARD

1. The Government of India, Ministry of labour, New Delhi vide its order No. L-13012/3/2005-IR (DU) dated 17-5-2006 referred this Industrial Dispute arose between the employers in relation to the Management of Cantonment Board and their Workman, Smt. Shaloo Singh, to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-secdtion (1) and Sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) on the basis of the following Schedule :

SCHEDULE

"Whether the action of the Cantonment Executive Officer, Cantonment Board, Shillong-I in dismissing Smt. Shaloo Singh, Safaiwala from service w.e.f. 26-11-2001 is justified ? If not, to what relief Smt. Shaloo Singh is entitled to ?"

2. Having receipt the notices and on being appearance of both the parties the proceeding is proceeded here for disposal and Numbered 13/2006 as per Procedure.

3. The case of the workman Smt. Shaloo Singh in brief that she was working as Safaiwala at Shillong Cantonment Board after death of her husband Mangal Singh. After joining in the above establishment she was working regularly and without break. Since 8-5-2001, she was suffering from mental ailment and could not attend her duties and left for Guwahati for better treatment and got treatment at Gauhati Medical College, Guwahati as indoor patient. After returning from Guwahati and staying at her

residence at Shillong when she went to join for her duty on 23-7-2003 Forenoon she was told that due to prolong absence she is dismissed from her service. The dismissal order was passed in her absence without show cause notice.

4. Case of the Management in brief that the workman concerned was in the habit of remaining absence from her duty without obtaining prior approval from the competent authority and use to submit application for regularization of her absence on medical ground or otherwise. That as per report of the Sanitary Inspector she remained absent from duty with effect from 8-5-2001 without permission of the competent authority and vide letter No. SHG/H/SHALOO SINGH/274 dated 5-7-2001 a show cause notice was issued to her to report for duty forthwith and also to explain in writing the reasons for her absence and as to why necessary disciplinary action should not be taken against her as she was not found in her residence at Gora Line, Laitumkhrah, Shillong. The notice was published in a daily Newspaper "The Shillong Times" on 26-9-2001. The Disciplinary Authority imposed the punishment of dismissal from her service.

5. Having receipt the W.S. filed by both the parties and as prayed by both the parties a Local Trial was fixed at Shillong on 7-6-2007 at Meghalaya Circuit House as scheduled for Camp Court. The Management Official Smt. Indira Mehraj was present representing the Management with their learned Advocate Mr. R. Deb Nath and the workman was present with the learned Advocate Smt. P. Yadav, in the Meghalaya Circuit House. The evidence of the workman was recorded. The cross examination was deferred and decided to continue the trial at Guwahati but on the date fixed i.e. 7-8-2007 Management Official Smt. Indira Mehraj representing the Management with their Advocate Sri R. Deb Nath appeared. But the workman did not appear and a petition sent by her by Courier Service whereby she narrated that she is not willing to proceed with the case due to unavoidable circumstances and prayed to withdraw the case. As she is not willing to proceed with the case and prayed to withdraw the case and in my opinion there is no bar of allowing the petition for withdrawal of the case. Accordingly petition allowed and matter is disposed as withdrawn. It is pertinent to note here that I have not discussed the merit of the matter as in case of withdrawal merit must not be discussed. For ends of natural justice the withdrawal petition is allowed and it is disposed on withdrawal. Accordingly Award is passed and prepared.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3081.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण बंगलौर के पंचाट (संदर्भ संख्या 41/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/113/2002-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 41/2002) of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Hyderabad, and their workmen, which was received by the Central Government on 26-9-2007.

[No. L-12012/113/2002-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

Dated : 17th September 2007

PRESENT

Shri A. R. SIDDIQUI, Presiding Officer

C. R. No. 41/2002

I Party	**II Party**
Shri Abdul Hameed, Ex. Peon, Resident of House No. 1-960/2, TAR File, Opp. Railway Station, Gulbarga-585101 Karnataka State.	The Asstt. General Manager, State Bank of Hyderabad, Region-1, Zonal Office, P.B. No. 48, Super Market, Gulbarga-585101 Karnataka State.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/113/2002-IR (B-I) dated 12th August, 2002 for adjudication on the following schedule :

SCHEDULE

"Whether the action of management of State Bank of Hyderabad is justified in imposing the punishment of "Discharge from Service" though the applicant workman Shri Abdul Hameed has made good the amount in all the cases ? If not what relief the workman is entitled ?"

2. A chargesheet dated 2-5-1993, came to be served upon the first party workman on the allegation that while, he was working as a Peon at Super Market Branch, Gulbarga of the management, between 12-10-1988 and 21-4-1990, he appears to have fraudulently encashed certain amount belonging to the 10 different customers of the bank by way of withdrawals from their respective accounts and thereby committed gross misconduct as per Clause 19.5(d) & (j) of the Bipartite settlement and also failed to submit the sale deed for creation of equitable mortgage for having taken the housing loan from the bank inspite of several reminders and thereby violated the terms of loan sanction order in his favour. Details with respect to the amount withdrawn and the dates on which they were withdrawn by the first party and the names of the customers were given by way of Statement of Imputation incorporated in the chargesheet. The first party after having received the chargesheet submitted his explanation denying almost all the charges of misconduct leveled against him and therefore, the management thought of holding the DE against the first party and accordingly with due notice to the first party DE was conducted being participated by him taking the assistance of DR and on the conclusion of the enquiry, enquiry report was submitted by the enquiry officer holding that the charges No. 2, 6, 7, 9, 10 & 11 have been established partially and that the charges No. 1, 5 & 11 have been fully proved and whereas, charges No. 3 & 4 have remained to be established by the management. Thereupon, the first party was furnished with the enquiry report and the explanation offered by him on the said report not being found satisfactory, punishment by way of discharge from service was proposed and after giving personal hearing to the first party, it was confirmed. The first party preferred an appeal and that came to be rejected and thereupon he moved the Hon'ble High Court by way of writ petition challenging the impugned punishment order passed against him and his writ petition came to be disposed of by order dated 26-2-1999 giving him opportunity to approach the appropriate forum. He then raised a conciliation proceeding and resulting into the present reference to this tribunal.

3. The first party in his claim statement challenged the impugned punishment order as unjust and illegal and the findings of the enquiry officer holding him guilty of the charges as suffering from perversity not being based upon sufficient and legal evidence etc. He also challenged the enquiry proceedings as opposed to the principles of natural justice (pleadings with regard to the validity or otherwise of the enquiry proceedings, so also on the point of perversity of the findings are omitted there being a separate finding recorded by this tribunal setting aside the enquiry proceedings).

4. The management by its counter statement however, asserted and maintained that the impugned punishment order passed against the first party is legal and justified based on the findings of the enquiry officer holding him guilty of most of the charges of misconduct leveled against him. The management also contended that findings of the enquiry officer suffered from no perversity, they being based on sufficient and legal evidence and that the proceedings of the enquiry conducted against the first party were in tune with the principles of natural justice, the first party having been afforded the opportunity of defending himself taking the assistance of DR.

5. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this tribunal on 7-1-2005 framed the following Preliminary Issue :

> "Whether the DE conducted against the first party by the second party is fair and proper ?"

6. During the course of trial of the said issue, the management examined one witness as MW1 and got marked 14 documents at Ex. M1 to M14 in his deposition. The first party also examined himself as WW1 there was no cross examination to him on behalf of the management.

7. After having heard the learned counsel for the first party (counsel for the second party remained absent) this tribunal by order dated 7-8-2007 recorded a finding to the effect that the enquiry held against the first party is not fair and proper. There being no plea taken by the management in its counter statement seeking permission of this tribunal to lead fresh evidence on merits, in case, the DE was set aside, the matter came to be posted to hear the parties on merits of the case. When the case was taken up for hearing on 22-8-2007, learned counsels representing both the parties remained absent and therefore, arguments were taken as heard and case is posted this day for award.

8. As noted above, the Domestic Enquiry conducted against the first party come to be set aside not being fair and proper and therefore, in the face of the aforesaid finding recorded by this tribunal, the only course available to the management was to establish the charges of misconduct leveled against the first party by leading fresh evidence on the merits of the case. As noted above, the management did not take any plea in its counter statement seeking permission of this tribunal to lead fresh evidence on merits, in case, the DE was set aside. That apart, there was no attempt made on the part of the management seeking such a permission from this tribunal even after, the DE was set aside and when the matter came to be posted to hear on merits or up till this date. Therefore, proceedings of enquiry being set aside, enquiry findings based on those proceedings holding the workman guilty of the charges of misconduct leveled against him survive no more and in the result, the punishment order passed against the first party based on those findings of the enquiry officer become illegal and invalid. In the result, it goes without saying that the impugned punishment order passed against the first party is illegal and void ab initio.

9. Since the punishment order is held to be illegal and void, the natural corollary would be the reinstatement of the first party into the services of the management.

10. As far as relief of back wages is concerned, there is again no evidence let on behalf of the management to show that the first party has been gainfully employed when he was out of the service of the management from the date of impugned punishment order. The first party in his Claim Statement at para 12 stated that he is a poor employee having no source of income and his only source of income has been snatched away by the management by removing him from service. The fact that the first party worked as a Peon and he is an illiterate man not denied and cannot be denied by the management. Therefore, it cannot be said that he could have got any gainful employment after he was removed from service. In the result, keeping in view the above said factors, he cannot be denied the back wages from the date of his removal from service till the date he is to be reinstated in service along with continuity of service and other consequential benefits. Hence the following award :

AWARD

The management is directed to reinstate the first party in its services with full back wages from the date of impugned punishment order till the date of his reinstatement with continuity of service and other consequential benefits. No costs.

(Dictated to PA, transcribed by her, corrected and signed by me on 17th September, 2007.)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2007

का. आ. 3082.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 14/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/21/2004-आई आर (सी एम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 26th September, 2007

S.O. 3082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Central Public Works Department and their workman, which was received by the Central Government on 26-9-2007.

[No. L-42012/21/2004-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

PRESENT:

R. N. Rai, Presiding Officer

I.D. No. 14/2005

Sh. B. K. Prasad — Ist Party
Sh. Ashwani Bhardwaj — IInd Party

In the matter of:

Ms. Sapna,
C/o General Secretary,
CPWD Mazdoor Union,
Room No. 95, 1/10,
Jamnagar House, Shahjahan Road,
New Delhi.

Versus

1. The Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.

2. The Executive Engineer, D-Division,
Central Public Works Department,
D-11/26, Flat Kidwai Nagar,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-42012/21/2004-IR (CM-II) Central Government dt. 19-1-2005 has referred the following point for adjudication.

The point runs as hereunder :

"Whether the action of the management of Central Public Works Department, D-Division, Kidwai Nagar, New Delhi in terminating the services of Ms. Sapna, Typist w.e.f. 30-06-2001 instead of regularizing her, services is legal and justified ? If not, to what relief she is entitled and from which date ?"

The workman applicant has filed claim statement. In the claim statement it has been stated that Ms. Sapna was initially employed w.e.f. 1-10-1994 under the above management for the work of Hindi and English typing etc.

That she is having the qualification of 10th class pass and the typing test was also passed the Board Examination conducted by the National Open School so she is qualified in Hindi typist test. Copy of the certificate issued by the National Open School and Mark Sheet are annexed as Annexure-A & B respectively.

That Ms. Sapna has also registered her name in the Employment Exchange. Copy of Employment Exchange card is annexed as Annexure-C.

That the workman Ms. Sapna also belongs to the S.C. category and certificate issued by the Sub-Divisional Magistrate is also enclosed as Annexure-D with this claim application.

That the workman Ms. Sapna has been performing her duties of Hindi and English typing regularly and sometime she has been also performing the duty of store work for distribution of stationary, etc.

That the regular/work charged employees are also performing the duty of Enquiry Clerk and have been getting their wages in the time scale in the grade attached with the Lower Division Clerk.

The qualification of regular Lower Division Clerks are 10th pass so she is also having the proper qualification to absorb for the work of L. D .C.

That in CPWD the daily rate workers performing their duties on muster roll and Hand Receipt were also getting their wages in the time scale attached to the Lower Division Clerk from time to time but Ms. Sapna has been denied equal pay for equal work as she is also working on the same footing.

That after the judgement of Hon'ble Supreme Court dated 17-1-1986 in the matter of Surinder Singh & Others all the workmen employed on the muster roll or Hand Receipt as daily rated workers have been getting their wages in the pay scale of Rs. 950-1500 and after revision w.e.f. 1-1-1996 were getting the wages in the time scale of Rs. 3050-4590 except increment but the workman Ms. Sapna is denied even minimum wages fixed by the appropriate Govt. from time to time for the clerical job which is also against the equal pay for equal work as prescribed in Equal Pay Remuneration Act, 1976 being a female worker because the other male worker are getting higher wages in the time scale as per the judgment and order of Hon'ble Supreme Court dated 17-1-1996.

That the management has also been discriminating in the payment of pay and allowances as prescribed in Equal Remuneration Act, 1976. These type of discrimination is not permissible even under the Act and is also violative of natural rights granted by the Constitution of India in Part III.

That only to deny the same wages and facilities, the workmen have been engaged on so-called contract basis on the regular job which is unfair labour practice under the 5th Schedule of Industrial Disputes Act, 1947.

That after the judgment of Hon'ble Supreme Court dated 17-1-86, all the above workmen had got arrears of the wages in the old pay scale of Rs. 950-1500 and after revision w.e.f. 1-1-96 were getting the wages in the time scale of Rs. 3050-4590.

That Hon'ble Supreme Court vide their order dated 17-1-86 had also directed the management and hoped that Government will take appropriate action to regularize the services of those workmen who have been in continuous service/employment for more than 6 months.

That the management did not regularize the services of the workmen in the time scale attached to the grade even though she is having all essential qualifications and other eligibility conditions and continuously working w.e.f. 1-10-94 and denial her the benefits of regular workman is unfair labour practice adopted by the above management and is contrary to the provision of Industrial Disputes Act, 1947.

That the workman has been performing her duties under the above management directly and her duty hour starts from 10 AM to 5.30 PM and sometimes she also performed her duties even after duty hours for the exigency of work and she has been getting even less minimum wages fixed for clerical work by the appropriate Government under the Minimum Wages Act, but other Muster Roll and Hand Receipt worker performing the same duty under the different divisions of Director General (Works) of CPWD and getting their wages in the time scale except increment from the date of their initial employment. This action of the management is discriminatory and unlawful.

That the claim of the workman is genuine for regularization and classification by grades as the same is provided under Item-7 of 3rd Schedule under Section 7A of the Industrial Disputes Act, 1947.

That the dispute for grant of regularization of services and equal pay for equal work was raised before the Conciliation Officer on 10th May, 2001, and also requested for not to change the service conditions either by giving artificial break and change of mode of payment, or termination without taking prior permission before the Cancellation Officer as per Section-33. Copy of the said statement of claim is also annexed as Annexure-E.

That during the pendency of the said dispute, management terminated the service of workman w.e.f. 30-6-2001, without taking prior permission from the Cancellation Officer-cum-Assistant Labour Commissioner (Central), New Delhi, under Section 23 under Industrial Disputed Act. Copy of F. O. C. Report (Part-I) submitted by the Cancellation Officer-cum-Assistant Labour Commissioner (Central) to the Secretary, Govt. of India, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi, which proves the management terminated the services of workmen during the conciliation proceedings without taking prior permission under Section 33 of the Industrial Disputes Act, is also annexed as Annexure-F.

That the workman had completed more than 240 days in each of the year within 12 months and the management also did not pay one month notice or one month pay in lieu of notice and compensation etc. as provided under Section 25F of the Industrial Disputes Act. On this account also the termination/retrenchment of workman w.e.f. 30-6-2001 is illegal as well as unjustified.

That the violation of Section 33 of Industrial Dispute Act while not taking prior permission before the Cancellation Officer-cum-Assistant Labour Commissioner (Central), the termination order of services of Ms. Sapna, Typist w.e.f. 30-6-2001 is non est, so the workman has to be treated on job with full back wages and continuity of service.

The Management has filed written statement. In the written statement it has been stated that the applicant was never employed by this office and hence never attended this office as our employed worker in any capacity. The Executive Engineer in CPWD is not competent to make appointment to the post of LDC/Typist as such there had never been any relationship between Ms. Sapna and CPWD as employee and employer. The applicant used to do typing work from her home/office and was paid accordingly with respect to quantum of work done.

That the workman was terminated with a view to teach her lesson for approaching her rightful claim for regularization before the Conciliation Officer-cum-Assistant Labour Commission (Central) which action of the management is also unfair labour practice as per Item 11 listed as unfair labour practice in the 5th Schedule of Section 2(ra) of Industrial Disputes Act 1947. Item 11 of the 5th Schedule is reproduced as under

> "To discharge or discriminate against any workman for filing charges or testify against an employer in any enquiry or proceedings relating to any industrial disputes"

That instead of action of management of CPWD, D-Division, Kidwai Nagar, New Delhi and terminating the services of Ms. Sapna, Typist w.e.f. 30-6-2001 instead of regularizing her services is illegal as well as unjustified.

That after termination of services of workman, the workman remains unemployed, so she is entitled to reinstatement with full back wages and continuity of service along with all consequential benefits.

No comments since the applicant was not on the Roll of this office.

The details of her qualification are irrelevant.

The details are irrelevant her name was never sponsored to this office against any vacancy.

This office has nothing to do with her cost in any case.

The applicant has not been employed in any category by this office. Hence, no comments.

The contents of this para have no relevance as the LDCs are appointed through competitive exam, being conducted by the Staff Selection Commission. As such regularizing of Ms. Sapna as LDC/Typist in CPWD would be tantamount to back door entry.

The contents of the para are also irrelevant as mentioned in para-3 above.

The para is irrelevant hence no comments.

The para is also denied since the applicant has never been engaged as a daily rated labourer or otherwise in any capacity.

The applicant has never been employed or engaged as worker on basis for the full time payments hence this case has no similarity with the Supreme Court Judgment mentioned in this para.

Ms. Sapna was never engaged on contract either. No such contract was signed with her of any kind. Hence her statement is misleading.

The claim is denied as per the above paras.

The applicant has never been employed in any capacity. It is not the similar case as mentioned in the para. Hence the claim is denied.

The averments of this para are also vehemently denied and the statement made in the above mentioned para are reiterated.

The claim of the applicants is fake and not tenable in view of the statement made above. She was never employed in this office and hence not attending this office as an employed worker.

Since the applicant has never been employed by this Division, the changing of service condition does not arise.

Since the applicant has never been engaged on daily wages/monthly wages for the full time, the question of either termination or retrenchment does not arise.

It is incorrect to say that Ms. Sapna was terminated w.e.f. 30-6-01. In fact she was never given any appointment in the department and therefore question of her termination does not arise. Such types of false claims are only cooked up to frame the false claim.

Since there was neither appointment nor termination in the case of Ms. Sapna, the question of any mandatory notice or salary in lieu of that does not arise. As such her claim under Section 25F of Industrial Dispute Act, therefore does not apply in this case.

Ms. Sapna was never employee of this department as stated in the above para. Therefore, there is no question

of treating her continuously in the job. The claim may therefore be rejected please.

As stated in the above paras that there was neither appointment nor termination, therefore, the question of any action with a revengeful attitude against her does not arise.

As stated in the above paras, since Ms. Sapna was neither appointed nor terminated, hence there is no illegal action on the part of the department in any way.

Since there is no appointment and no termination in the case of Ms. Sapna, her employment or unemployment at any stage is none of the concerned of this department.

The workman applicant has filed rejoinder. In the rejoinder she has reiterated the averments of her claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

From perusal of the pleadings of the parties the following issues arise for adjudication :

(1) Whether the workman applicant has performed her duties as a Typist for 240 days as alleged ?

(2) Whether the workman applicant is entitled to reinstatement/regularization ?

(3) Whether the workman applicant is entitled to 'Equal Pay for Equal Work' ?

(4) To what amount of backwages the workman applicant is entitled ?

(5) Relief if any ?

ISSUE NO. 1

It was submitted from the side of the workman applicant that she worked continuously from 1-10-1994 to 30-6-2001 in the office of the Executive Engineer, CPWD. The workman has filed certificate issued by the Executive Engineer dated 20-9-1997. This photocopy certificate has not been denied. The Executive Engineer has certified that the workman applicant was working continuously on job work of typing English and Hindi from 30-10-1996 to 14-5-1997. The Executive Engineer has issued another certificate dated 28-11-2000. It has been certified by the Executive Engineer that the workman applicant has worked on job work of typing English and Hindi in the division w.e.f. 1-10-1999 to 30-5-2000.

Thus, it is amply proved by these two certificates that the workman applicant has worked for 240 days in the year 1996-97 and 240 days in the year 1999-2000.

MW1 has admitted in his cross-examination that Ms. Sapna was performing duties under the Electrical Engineer w.e.f. 1-10-1994 to 30-6-2001 on job basis. According to the statement of the management witness the workman applicant performed her duties from 1-10-1994 to 30-6-2001 on job basis.

The case of the management is that she was assigned work and she performed this work and payment was made to the workman applicant for alleged job. All the payments have been made by the management.

It was the duty of the management to file vouchers/ slips to show that payment to the workman has been made on job basis for the assigned works.

The workman has filed affidavit that payment was made to her monthly. In case payment was made to her on job basis the management should have filed such document and as the same may be in possession of the management.

MW1 has admitted that she worked from 1-10-1994 to 30-6-2001 and her services were terminated on 30-6-2001 while dispute was pending before the Conciliator. The management has acted in breach of Section 33(1)(b) which is a penal provision. However, the workman applicant should have raised this point before the Conciliator.

From the admission of MW1 and two certificates issued by the management, it stands amply proved that the workman applicant discharged her duties regularly and she performed 240 days work atleast in the years 1995, 1996, 1997, 1998, 1999 and 2000. Her services were terminated illegally on 30-6-2001 as she raised the dispute before the Conciliator. The workman has performed 240 days work in almost six years.

There is no evidence that the workman applicant worked on job basis as is the case of the management. The Executive Engineer has admitted that she was a hard worker and she worked continuously. MW1 has also admitted that she performed her duties continuously from 1-10-1994 to 30-6-2001. She may have not worked for 240 days in the year 1994 and 2001 but she has performed 240 days work in the years 1995, 1996, 1997, 1998, 1999 and 2000.

This issue is decided accordingly.

ISSUE NO. 2 :

The reference is regarding holding action of the management illegal and for regularization of the workman

In view of the Constitution Bench Judgment of Uma Devi's case, there is no question of regularization as the workman has not worked for 10 years and above.

It has been held in this judgment as under :

"**Regularisation**—Temporary employee/Contractual worker—Unless the appointment is in terms of the relevant rules and after a proper competition among

qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued—Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

(f) 'High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service.'

(g) It has been specifically held in this judgment as under :

'Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.'

It has been held in this judgment that in case workman has worked for 10 years without the orders of the court the government may consider the feasibility of regularization of such workman. In the instant case the workman applicant has not worked for 10 years so in view of the constitution bench judgment the workman applicant is not entitled to regularization.

The reference is for regularization but reinstatement is incidental to regularization. The workman applicant has not completed 10 years of service so in view of the judgment of the Hon'ble Apex Court (2006) 4 SCC she is not entitled to regularization but she is entitled to reinstatement in view of section 25F of the ID Act, 1947. She has performed 240 days work in several years but she has not been paid one month's pay in lieu of notice and retrenchment compensation. Section 10(4) of the ID Act, 1947 provides as under :—

Section 10(4)

"Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto."

It is provided u/s 10(4) of the ID Act, 1947 that the Tribunal shall confine its adjudication on those points and matters incidental thereto. The reference has been sent for considering the regularization of the workman no doubt but reinstatement is a matter incidental thereto. In case it is not possible to give the benefit of regularization to the workman she can be reinstated on this reference as the matter is incidental to the main reference.

It is settled law that in case a workman has completed 240 days work and one month's pay in lieu of notice and retrenchment compensation has not been given to him/her, he/she is entitled to reinstatement. There is no cessation of service in case retrenchment compensation has not been paid.

In 2000 LLR 523 State of U.P. and Rajender Singh the Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

In AIR 2002 SC 1313 the Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25F, G of the ID Act are attracted. In section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of section 25F are not complied. In the instant case no compensation has been paid to the workman.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid section 25F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of section 25F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed unnecessarily so Sections 25F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006(4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 and 309 are infringed. There is no constitutional mandate that the government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary an ad hoc appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing the services of the workman have not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006(4) Scale has not annulled Section 11A of the ID Act and the legislature has authorized this Tribunal to set aside dismissal or discharge on its consideration and direct reinstatement. The judgment cited by the management is not applicable in the facts and circumstances of the case.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal disengagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too. The work of typing Hindi and English is a continuous nature of work.

In view of the law cited above and the facts pertaining in this case, the workman is entitled to reinstatement.

This issue is decided accordingly.

ISSUE NO. 3

The workman has admitted in her cross-examination that she appeared 2-3 times in the SSC examination and she was not able to pass the same. It is vivid from her admission that she could not qualify SSC examination, so she was not found legible by the SSC for regular appointment. It indicates that she was not proficient in her work. She is a Typist. She may be doing typing work off and on for her subsistence.

It has been held in 1998 II LLJ 633 by the Hon'ble Apex Court as under :

> 'Equal Pay for Equal Work' principle—If there is clear-cut difference in recruitment qualifications, regarding experience as well as educational qualification, between two sets of employees, there cannot be automatic linkage and parity of treatment for retrospective revision of pay scales—To grant relief

in such circumstances would result in reverse discrimination in favour of claimants to relief."

It has been held in (2003) 6 SC 123 as under :—

"The principle of equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. It is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

From perusal of this judgment of the Hon'ble Apex Court, it becomes quite obvious that after establishing complete and wholesale identity, identical pay scales can be decided. The workman applicant has not been selected through regular process of recruitment. She was engaged for the work of typing. She has not passed SSC examination.

In the circumstances the workman applicant is not entitled to "equal pay for equal work" since her engagement.

This issue is decided accordingly.

ISSUE NO. 4

It was submitted by the management that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirely is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968—three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstances the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer. In 2005 IV AD SC 39—three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11A of the ID Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

In view of the facts and circumstances of the case the workman is entitled to 25% back wages.

This issue is decided accordingly.

ISSUE NO. 5

The workman is entitled to reinstatement w.e.f. 30-6-2001 alongwith 25% back wages. The management should reinstate the workman w.e.f. 30-6-2001.

This issue is decided accordingly.

The reference is replied thus :

The action of the management of Central Public Works Department, D-Division, Kidwai Nagar, New Delhi in terminating the services of Ms. Sapna, Typist w.e.f. 30-6-2001 instead of regularizing her services is neither legal nor justified. The management should reinstate the workman applicant w.e.f. 30-6-2001 alongwith 25% back wages within two months from the date of the publication of the award.

The award is given accordingly.

Date : 14-9-2007 R. N. RAI, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3083.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण सं.-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या-531/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल 12012/14/1994-आई आर (बी.-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3083.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 531/2005) of the Central Government Industrial Tribunal-II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-12012/14/1994-IR (B-1)]
AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case No. I. D. No. 531/2005

Registered on 20-8-2005

Date of Order : 13-8-2007

Rajbir represented by
State Bank of India Staff Congress,
1304, Sector-23-B,
Chandigarh ... Petitioner

Versus

State Bank of India,
through General Manager,
Planning, Local Head Office,
Sector-17, Chandigarh ... Respondent

APPEARANCE

For the Workman : Mr. Raj Kaushik, Advocate

For the Management : Shri D. V. Mehta, Advocate

AWARD

Whether the action of Management of SBI Local Head Office, Sector 17, Chandigarh in terminating the services of Shri Rajbir engaged as a Sweeper in Local Head Office, SBI Chandigarh w.e.f. 1st January, 1987 is legally just and valid ? If not, then to what relief the workman is entitled and from which date," is the reference received from Ministry of Labour Government of India vide their No. L-12012/14/94-IR(B-I) dated 1st June, 1995. The Government has desired of this Tribunal to adjudicate upon this reference and reply.

Notices were issued to the parties to come and assist this Tribunal in answering the reference. The parties appeared through their representatives and counsels from time to time and filed their statements of claim and counter claims. The Management rebutted the claim of the workman. Both the parties filed affidavits in support of their claims, the workman filed his own affidavit whereas the Management filed the affidavit of Shri A. S. Kumaria, Assistant General Manager. One Shri Trimal Singh also filed their affidavit in support of the claim of the workman.

Stated in brief, the claim of the workman is that he was employed as sweeper by the Management in their Local Head Office, Chandigarh on 1st Feb., 1987 and was allowed to work till 30th November, 1987. He continuously worked for 240 days but his services were terminated without following the provisions of Section 25-F of the Industrial Disputes Act, 1947, for short "Act". He further claims that he was not given appointment nor termination orders; that the Management retained Shri Surinder in their service although he was four months' junior to him. Thus they violated the principle of "first come last go". It is further stated by him that in the year 1988 he was again engaged for one and half month, on half scale wages, in the temporary capacity w.e.f. 26th June, 1989 and his services were terminated after he served the Management for two months and that the work for which he was engaged was of a permanent nature, therefore, the Management could not bring the same in the preview of Section 2(oo)(bb) of the Act. They violated the provisions of the Act by engaging fresh hands and ignored the claim of the workman. It is further alleged by him that although he was appointed as a sweeper and so was entitled to the wages according to the scales meant for sweepers but the Management paid him 12 Rupees a day. He was also engaged in the year 1989. His termination was an unfair labour practice. The prayer of the workman is that of the order of terminating his services be declared as illegal, unjustified and an unfair labour practice. He may be allowed full wages and all other consequential benefits.

The Management has opposed the claim of the workman. It is their case that the workman was engaged as a Casual Labour for 73 days from 16th February, 1987 to 17th May, 1987 on wages at the rate of Rs. 12 per day. He also worked for them for 33 days on half scale from 26th June, 1989 to 28th July, 1989. His services were discontinued when not required. That he did not serve the Management for 240 days in 12 months preceding the date of his disengagement. It is further their claim that the dispute has been raised belatedly, that is, after more than 7 years, therefore, the same is bad for latches. On merit it is their submission that since the workman did not perform duties for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. Denying that they had not followed the principle of last come first go it is stated by them that the workman had also served the Management as a part time sweeper from 26th June, 1982 to 28th July, 1989, besides he has rendered service during the year 1987. They further denied that the Management had recruited fresh sweeper. It is further their case that the workman was not entitled to full scale wages nor the Management followed unfair labour practice. They have prayed that since the workman has no right to enforce, therefore, his petition may be dismissed with cost.

As stated above the workman appeared as a witness. He also produced Trimal Singh as his witness. In his own statement the workman admitted that he had served the Management from 16th May, 1987 to 17th May, 1987 and from June to October in the year 1989. He further admitted that he was paid wages at the rate of Rs. 12 but claimed that he had worked for the management upto 1991. His witness Trimal Singh in cross examination stated that he knew the workman since 1979. He however could not say whether the workman Rajbir was a regular employee of the Bank, but asserted that Rajbir had worked in the OMB Branch in the local headquarter building, Chandigarh.

The witness for the Management A.K. Kumaria deposed that the workman was engaged on 16th Feb., 1987 and he had served upto 17th May, 1987 as a Casual worker. He denied that the workman had served the Management upto 4th Dec., 1987. He however admitted that the workman had also served the Management from 26th June, 1989 upto 28th July, 1989, but as a part time worker. He denied that the workman had served upto October, 1989. He showed his inability to say anything about exhibit W-2, the statements certified by the officers of the Management, without examining the record. He also could not say whether anybody was disengaged after the disengagement of the workman. He admitted that the Management had not issued any notice to the workman nor any inquiry was held against him. He also showed his want of knowledge that the employees union had an agreement with the Management that all those who had served them for 240 days were to be regularised in service. He further stated that during his tenure fresh recruitment of sweepers was done. He could also not say in what circumstances the workman was disengaged. He denied to have withheld the record pertaining to the attendance of the workman. He admitted that Messrs Pal and Ranbir were working with the management but he could not say that they were engaged after the disengagement of the workman.

After going through the evidence of the parties, both oral and documentary, I find that the evidence produced does not relate to the date of disengagement of the workman as noted in the reference. According to the reference the workman was disengaged by the management on 1st January, 1987. As per his own statement the workman had served the Management from 16th Feb., 1987. He nowhere claimed that he had served the Management till 1st January, 1987 when his services were terminated by the Management. There is absolutely no evidence to show that the workman had served the management for 240 days within 12 months preceding 1st January, 1987. Neither there is a reference about the violation of provisions of Sub-section G and H of the Act by the management nor there is any evidence to show that the management had retained the juniors of the workman in service whereas they terminated the services of the workman. There is also no evidence to show that any fresh candidate was engaged without providing opportunity to the workman to serve. The allegations thus made by the workman in this regard is also not proved.

The counsel for the workman, during the course of argument, submitted that the relevant date given in the reference has been incorrectly stated as the claim of the workman was that he was disengaged on 1st January, 1991. On record I do not find any evidence to this effect nor the workman, at this stage, raise such a claim. Moreover without the modification of the reference, this Tribunal cannot go into this aspect. Besides there is no evidence to show that the workman had served the Management of 240 days preceding even 1st January, 1991. The substance of the statement of the workman has been given above according to which the workman is shown to have worked in the year 1987. He, however, claimed that he had worked upto the year 1991, but without any evidence to show that. Even if it is presumed that the relevant date in the reference should have been 1st January, 1991, then also I say, that there is no evidence that the management had disengaged the workman on that day without following the provisions of Section 25-F of the Act. The workman has placed on record a number of statements shown to have been attested by the officer of the Management. These statements also are of no help to the workman as they relate to the period onward 1st January, 1987. This statement however does not carry the clear date nor the period so shown is relevant to the relevant date as given in the reference. To my mind these statements are also not helpful to the workman.

After going through the evidence brought on record I am of the opinion that the workman has failed to show that the Management had disengaged the workman on 1st January, 1987, without following the provisions of law and principles of natural justice. The workman has also failed to prove that on the relevant date he had put in continuous service of 240 days in 12 months preceding the said date, therefore he was entitled to the protection under Section 25-F of the Act. In the circumstances he is entitled to no relief. The award is passed in these terms. Let a copy of this award be sent to the appropriate govt. for necessary action and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3084.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शोप एण्ड वूल रिसर्च इन्स्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या-975/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल 42012/158/2001-आई आर (सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3084.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 975/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Sheep & Wool Research Institute and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/158/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 975/2005

Registered on : 15-9-2005

Date of Decision : 18-7-2007

Dolu Ram S/o Shri Kateku Ram
R/o Village Khelnu,
PO Garsa,
Tehsil and District Kullu, H.P. ... Petitioner

Versus

The Director,
CSSRI, Avikanagar,
Tehsil Malpura,
District Tonk,
Rajasthan ... Respondent

APPEARANCE

For the Workman : Mr. Y.S. Bajwa, AR

For the Management : Mr. R.K. Sharma, AR

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/158/2001-IR (CM-II) dated 6th August, 2002 :

"Whether the action of the Management of North Temperate Regional Station, Central Sheep & Wool Research Institute, Garsa District, Kullu (H.P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan in terminating the services of Shri Dolu Ram S/o Shri Kateku Ram w.e.f. 1st July, 1998 is just and legal ? If not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K.S. Risan, head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order of Labour Court, Jaipur in MA No.-Labour Court 165 of 1969. Both, the workman as well as K.S. Risan, appeared as witness and were subject to cross examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1993 and served them upto 1st July, 1998 when his services were illegally terminated; that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continuous service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25 F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he worked was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands non-suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case, reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a research Institute and a part of Indian Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a Research Institute, is not business, engaged in Trade and Industrial activity,

therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical Laboratory reported as 1997 (3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID No. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 40-83/2000 decided on 11th Dec., 2002.

On merits the claim of the Management is that the claim of the workman projected in para 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1986, on the eventuality of seasonal work and was disengaged in the year 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn. 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H.P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the management, for 240 days in a calendar year. Dr. K.S. Risan who appeared as a witness for the Management proved his affidavit MW-1 and relied upon the letter No. 5437 dated 4th July, 1998. In cross examination he admitted that the Management had not charge sheeted the workman nor they had terminated his services. In fact since the Management did not received the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the management used to engaged the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract Labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the consideration of this Tribunal, is whether the Management, as detailed in the case had terminated the services of Shri Dolu Ram w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he had joined duty with the management, in the year 1993. In their Written Statement the management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the Management had terminated the service of the workman 1st July, 1998. The Management, as stated earlier admitted in para No. 2, on merit, that the workman was disengaged in March 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supposed to prove that on the day his services were disengaged, he had put in not less than a year of service to the Management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement admitted the detail of working days shown by the Management in their Written Statement, as correct. He further admitted that he had not served the Management for 240 days in any calendar year. Thus the workman admitted that he had not served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the Act for which the sine qua non is "having served the Management continuously for 240 days 12 months preceding the date of termination of his services.

The workman has utterly failed to prove that he had served the Management for 240 days. He admitted the number of days he had served for the Management as detailed in para 10 of the Written Statement. According to the detail given, the workman did not serve the Management for 240 days in any calendar year.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he was a workman who had served the Management for specified period, as required under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3085.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शीप एण्ड वूल रिसर्च इन्स्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या-989/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल 42012/156/2001-आई आर (सी.एम.-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3085.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 989/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Sheep and Wool Research Institute, and their workmen which was received by the Central Government on 27-9-2007.

[No. L-42012/156/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 989/2005

Registered on : 16-9-2005

Date of Decision : 18-7-2007

Gautam Singh, S/o Shri Pune Ram,
Village Tundanan,
PO : Diyar,
District Kullu, H.P. ... Petitioner

Versus

The Director,
CSSRI, Avikanagar,
Tehsil Malpura,
District Tonk,
Rajasthan ... Respondent

APPEARANCE

For the Workman : Shri Y.S. Bajwa, AR

For the Management : Mr. R.K. Sharma, AR

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/156/2001-IR (CM-II) dated 6th August, 2002 :

> "Whether the action of the Management of North Temperate Regional Station, Central Sheep & Wool Research Institute, Garsa District, Kullu (H.P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan in terminating the services of Shri Gautam Singh S/o Shri Pune Ram w.e.f. 1st July, 1998 is just and legal ? If not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K.S. Risan, head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order

of Labour Court, Jaipur in MA No. Labour Court 165 of 69. Both, the workman as well as K.S. Risan, appeared as witness and were subject to cross examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1993 and served them upto 1st July, 1998 when his services were illegally terminated; that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continue service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25 F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he work was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands non suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case, reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a research Institute and a part of Indiam Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a Research Institute, is not business, engaged in Trade and Industrial activity, therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical laboratory reported as 1997 (3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID No. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 40-83/2000 decided on 11th Dec., 2002.

On merits the claim of the Management is that the claim of the workman projected in para 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1996, on the eventuality of seasonal work and was disengaged in the year March 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn. 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H.P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the Management, for 240 days in a calendar year. Dr. K.S. Risan who appeared as a witness for the Management proved his affidavit MW-1 and relied upon the letter No. 5437 dated 4th July, 1998. In cross examination he admitted that the Management had not charge sheeted the workman nor they had terminated his services. In fact since the Management did not receive the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the management used to engage the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the consideration of this Tribunal, is whether the Management, as detailed in the

case had terminated the services of Shri Gautam Singh w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he had joined duty with the Management, in the year 1993. In their written statement the management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the management had terminated the service of the workman on 1st July, 1998. The Management, as stated earlier admitted in para No. 2, on merit, that the workman was disengaged in March, 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supported to prove that on the day his services were disengaged, he had put in not less than a year of service to the management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement admitted the detail of working days shown by the Management in their Statement, as correct. He however claimed that he had served the Management for 240 days in the year 1980 and 1982. By his own statement he admitted not to have served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the Act for which the sine quo non is "having served the Management continuously for 240 days 12 months preceding the date of termination of his services. The workman has utterly failed to prove that he had served the Management for 240 days. He admitted the number of days he had served for the Management as detailed in para 10 of the Written Statement. According to the detail given, the workman did not serve the Management for 240 days in calendar year preceding the date of his termination.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he was a workman who had served the Management for specified period, as required under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3086.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे नागपुर के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ सं. 70/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-41011/29/1994-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3086.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2000) of Central Government Industrial Tribunal, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway Nagpur, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-41011/29/1994-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI A.N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR.

Case No. CGIT/NGP/70/2000
Date 21-09-2007

Petitioner : Smt. Hemlata Sakharam Bagade

Party No. 1 : Representative of Hot Season Waterman, Central Railway, C/o Thejram Sonkwan Jewellers & Co., Ward No. 68, Ambedkar Marg, Kamal Chowk, Nagpur and 228 Others.

Versus

Respondent : The Divisional Railway Manager,

Party No. 2 : Central Railway, Nagpur.

AWARD

[Dated : 21st September, 2007]

1. The Central Government after satisfying the existence of disputes between Smt. Hemlata Sakharam Bagade, Representative of Hot Season Waterman, Central Railway, C/o. Thejram Sonkwan Jewellers & Co., Ward No. 68, Ambedkar Marg, Kamal Chowk, Nagpur and 228 others Party No. 1 and the Divisional Railway Manager, Central Railway, Nagpur, Party No. 2 referred the same for adjudication to this Tribunal vide its Letter No. L-41011/ 29/94-IRBI Dt. 08-02-2000 under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 [14 of 1947] with the following schedule—

2. "Whether the action of the Divisional Railway Manager, Central Railway, Nagpur in not regularizing the service of 229 emploees [As per List] is justified? If not, to what relief is the workmen entitled to?"

3. The petitioner Smt. Hemlata Bagade and 228 others have raised the disputes for ventilating their grievances for regularization. They have approached with the contentions that in all 229 including herself workman are engaged by the Divisional Railway Manager, Central Railway, Nagpur [hereafter referred as Management/ Respondent] regularly since 1979-80 as per list attached with this claim during the summer season every year. They are regularly working during summer season and every workman has acquired temporary status on completion of 120 days, in terms of Railway Board Letter No. E[NG]II/83/ CL/117 Dt. 25-01-1985. It lays down the policy decision and their service conditions. The Respondent is bound to implement the provisions of rules 2007 Sub-rule 4(A) at page No. 17 of chapter 20 of the Indian Railway Establishment Manual Vol. II relating to the absorption of casual labours. These provisions shall prevail to the letter of 1979. The casual labours who have put in 6 years, continuous or broken service are to be included in the penal for the appointment to Group "D" posts. Their unit-wise seniority list is prepared by commercial department of Management. The railway administration has to absorb the casual labours who have acquired a temporary status, against the regular post in Class-IV category in Group D after holding screening test. The instructions are mandatory contend in letter No. E[NG]II/81/CL/17 dt. 26-05-1982, which has been issued in furtherance of boards letter Dt. 24-07-1979 bearing No. E[NG]II/77/CLN/4. In view of the above instructions issued by the Railway Board, petitioners are claiming that are legible and legally entitled for absorption on regular vacancies in Group D in Class IV Category. However, the Respondent is avoiding it. It is not serious in considering their claims of absorption.

4. The President of their Union Smt. Hemlata Bagade had started hunger strike on 2 occasions. Despite of it and the assurances, the Management is not absorbing them on regular vacancy. On their representation the dispute was raised by them before the ALC, where the conciliation failed.

5. In view of the direction of the above letter also they are entitled to regularization on a permanent vacant post. The Management has misconceived the letter issued by the board in 1979. According to the petitioners if the total service of 6 years is considered then the wattage should be given to petitioners, otherwise the petitioner will never get the regularization. According to petitioners the management also discriminating amongst the workers. It has increased the post of lineman to accommodate the casual labours into the regular employees. But the said rule is not followed in respect of the petitioners. Finally they have prayed to direct the Respondent to absorb 229 employees, on the regular posts, declaring that the action of the management refusing to regularize them is unjust, illegal and unconstitutional.

6. The Divisional Railway Manager by filing a Written Statement resisted the claims of the petitioners. According to it the petitioners every year approached to them to utilize their services as seasonal casual labours during summer season for improving the requirements of waterman and woman. In summer the respondent engages some of them as a seasonal casual labours waterman and water woman maximum for 90 days. The employment was being used by the petitioner to supplement their income from their main employment or work, which they carry out during remaining 9 months or more. They seek the engagement in a hot season. Similarly the requirements of hot season casual labour varies from year to year and therefore, the period for which they are engaged also varies from year to year. It has denied that all 229 persons were engaged every year. Their seniority in Nagpur Division of Commercial Department is maintained and is based on the numbers of days of service put in by them. For the purpose of regularization instruction contended in letter Nos. E(NG)II/77/CL/N/4 Dt. 24-07-1979 a casual labours engaged seasonally viz water carrier,waterman/woman are to be considered for the screening for absorption alongwith other casual labours based on their total length to their service. The procedure of regularization and preparing panel laid down in rule 2006 of Indian Railways Establishment Manual, is to be followed Such absorptions of a casual labours in a regular group D employment is to be considered in accordance with the instructions issued by the Railway Board and not automatic. It is subject to the availability of the vacancies, suitability and eligibility of the individual casual labour and rules regarding the seniority unit-wise method of absorption as decided by Railway Administration. As per instructions the casual labours are to be screened and sent for medical. It depends on the

availability of regular vacancies. It also depends on their seniority which is to be decided on basis of their numbers of the days put in the service. The other casual labours having more casual service as seasonal casual labours are still waiting for regularization for want of vacancies. According to the management the seasonal workman will be regularized as per above instructions on their terms. The circular dt. 20-12-1985 referred by the petitioners is under the caption of employment of a casual labour in skilled categories. The petitioners are not skilled labours and hence the instructions of the above letter are not applicable to them. The management is denying that the petitioners are legally entitled and eligible onthe basis of continued or broken service to get the regular vacancies permanently. It has denied that the ALC has made some observations against the management. The provisions of sub rule 4[a] Page No. 17 of Rule 2007 of Chapter 20 of Indian Railways Establishment Manual are not applicable for the regularization of services. The number of casual labours to be placed on the panel shall be equal to actual numbers of vacancies. There are no provisions for grant of wattage to seasonal or other casual labours. There are no provisions for issuing an Employment Service Cards. The provisions of sub rule 4(a) page 17 of Rule 2007 of Chapter XX are not applicable to the present dispute of regularization of seasonal casual labour. Thus according to the management they are not entitled for permanency and any relief claimed the petitioners. Finally they have supported their action being in conformity of the rules and prayed to submit the negative award holding and justifying the action of the management as proper and correct.

7. On the above pleading the following points arise for my consideration :

(a) Whether the petitioners (229) are entitled for the absorption/regularization on regular vacancies in Group D in Class IV Category?

(b) And whether the action of management is legal and proper?

8. In order to prove the case the petitioners examined its President Smt. Hemlata Bagade and Secretary SK. Farid and on behalf of Management Assistant personal officer Central Railway Shri Chacko Thomus has been examined.

9. The perusal of the record indicates that undisputedly all 229 (casual labours as per list) are being engaged by the management during hot season for 3 (three) months every year as hot season watermen/women. No doubt the management has disputed that every person from the list was engaged every year. According to it the number of waterman was to vary every year considering the need, and naturally it was not possible to accommodate each workman. However, the entire W.S. does not disclose a specific denial regarding their engagement, year of engagement, completion of 120 days by each workman and even about the acquiring of temporary status. It seems that it has even absorbed many of the workmen from the list as per seniority along with other casual labours in regular vacancies in Group D employment following the rule No. 2006 of the Indian Railway Establishment Manual. (Hereafter will refer as Manual). It indicates that there are no disputes that the watermen as per list, who are otherwise competent, are legible for the absorption in Group "D" category.

10. The dispute seems to be as to which rule is applicable to them. Whether it is 2006 or Rule No. 2007 of the manual? According to the petitioners Rule No. 2007 is applicable to them and by giving the wattage 275 days per year they should be absorbed while according to the management Rule 2006 applies to the petitioners. Such absorption is not automatic but subject to the inter alia, availability of the vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway administration.

11. It is undisputedly the petitioners are Hot season waterman engaged for three months during summer season every year. The text of the both rules is clear enough to hold that Rule No. 2007 will not apply to the petitioners which are framed for skilled labours. The petitioners are not skilled labours and therefore Rule No. 2006 would apply to them. Every casual member will have to go for screening test as well as to Medical examination. They will have to show their eligibility and having qualification, required for Group "D" post. The witness No. 2 SK. Farid has stated in his affidavit, regarding some cases decided by the Hon. C.A.T. where Rule 2007 has been applied, but I do not find any certified copy of the order on record and they that applicable as well as binding on the Respondent. Simiarly there are no provisions for giving wattage while preparing the panel for absorption either in Rule 2006 or 2007 of the Manual. The petitioners have alleged that Respondent while absorbing even some waterman has given wattage of 275 days per year and now it is refusing to follow the same procedure. This amounts to discrimination between the workers. In few cases, might be about 19 or 20 according to the management it has committed inadvertent mistake. May it be as it is but in the absence of any provision, how the management can be asked to continue the similar mistake? Moreover as the rule provides the absorption along with the casual labours of other sections it will be causing prejudice to them. It will affect on the right of other casual labours of other section. In my humble opinion it has no base and the Management can not be directed to grant such wattage.

12. The perusal of the affidavit of Shri Chacko Thomus witness of the management shows that many of the eligible temporary watermen/petitioners from the list

have been absorbed and some are still remained. He has given the actual number of the absorbed casual watermen from the petitioners. It means they are not denying their right as per letters of railway board dated 20-12-1985 and 24-07-1979. They have correctly followed the Rule 2006 while absorbing the petitioners. It is not known whether the process is stopped or continued. The affidavit further shows the difficulties which the management is facing due to the insufficient and incorrect names and absence of other information, regarding the date of birth, educational qualification, addresses and even absence when called in identifying the petitioners. Submitting the different lists by the petitioner is also causing hurdles in process of absorption. The allegations mentioned in affidavit have considerable force and appears to be true. However, due to these hurdles the process cannot be stopped or given up. The management is bound to absorb the remaining petitioners as per list submitted by the Ministry, received in response to the letter of this Tribunal since it was not received along with the reference. To avoid the anomalies and other hurdles it will be proper to make that list as part and parcel of this Award. Similarly some directions are necessary while answering the reference in the affirmative. I pass the following order :

ORDER

1. The management/Divisional Manager Central Railway Nagpur is directed to absorb the remaining legible hot season waterman/Water Women/casual labours as per the list duly signed by Desk Officer, Shri Ajay Kumar, of 229 petitioners in the terms of the letters of Railway Board dated 20-12-1985 and 24-07-1979 and Rule 2006 of the Manual scrupulously.
2. The authenticated list duly signed by Desk Officer, Shri Ajay Kumar, received along with the letter No. L-41011/29/94-IR(B-I) dt. 18-10-2001 (copy appended with this award) shall form the part and parcel of this Award.

Dated : 21-09-2007

A.N. YADAV, Presiding Officer

CENTRAL RAILWAY
(Deptt. Commercial)
NAGPUR DIVISION

Seniority List of Hot Season Waterman/Waterwoman

Sr No.	Name of the Hot season Waterman/ Waterwoman	Intial appoint-ment Comm. Deptt.	Total days
1	2	3	4
1.	Smt. Hemlata Sakharam	12-04-81	265
2.	Shri Sunil Dhaniram	03-04-82	964
3.	Shri Vinod Dhaniram	27-4-83	937
4.	Smt. Pramila Ramwatar	03-04-82	994
5.	Smt. Sewantabai Manik	17-4-84	659
6.	Shri Devidas Narayan	04-04-84	602
7.	Shri Kisan Laxman	03-04-84	592
8.	Shri Cetanand Pyarelal	06-05-84	600
9.	Shri Sunil Ganpat	28-4-87	584
10.	Shri Naresh Ramawatar	18-05-85	600
11.	Shri Sanjay Namdeo	28-4-87	600
12.	Shri Beniprasad Sukka	19-05-85	584
13.	Shri Anil Lalji	19-06-85	579
14.	Shri Mahadeo Babulal	19-06-85	579
15.	Shri Ramesh Bapurao	29-03-83	594
16.	Shri Durgaprasad Ramchandra	11-04-85	562
17.	Shri Rajnarayan Ramkharan	05-04-86	556
18.	Smt. Santa Sambha	01-06-84	555
19.	Shri Suresh Soma	06-04-86	555
20.	Shri Mudhir Madhukar	06-04-86	555
21.	Shri Rajeshwar Shamrao	06-04-86	551
22.	Shri Santilal Babulal	02-04-83	550
23.	Shri Suresh Shankar	19-06-84	550
24.	Shri Prabhakar Sambaji	16-04-86	549
25.	Shri Kishor Bapurao	06-04-86	548
26.	Shri Sidheshwar Eknath	10-04-86	549
27.	Shri Kallu Dhannu	06-04-86	549
28.	Shri Tejandra Chitranjan	01-06-86	535
29.	Shri Ramesh Krishnarao	03-06-86	535
30.	Shri Banzamaniprasad Shukla	01-06-86	535
31.	Shri Suresh Brijlal	19-07-83	531
32.	Shri Priyajrao Sombaji	01-04-86	526
33.	Shri Ramesh Waman	01-05-85	525
34.	Shri Johni Michel	06-06-86	521
35.	Shri Madan Ramprasad	01-05-85	520
36.	Shri Ashok Ganpat Lokhande	06-06-86	519
37.	Shri Mahendra Raghunath	18-05-85	518

1	2	3	4
38.	Shri Balraj Hiraman	04-06-86	516
39.	Shri Kishor Balgoving	11-06-86	514
40.	Shri Ramesh Laxman	05-06-86	514
41.	Shri Ashwini Patel	29-03-87	508
42.	Shri Anand Pundilik	05-06-85	508
43.	Shri Shviaji Shashikant	06-06-86	507
44.	Shri Devendra Raghunath	01-04-87	507
45.	Shri Umeshprasad Raghusingh	01-04-87	507
46.	Shri Sk. Zahid Sk. Zashir	05-06-86	507
47.	Shri Jawahar Patel	04-06-86	507
48.	Shri Abdul Sk. Mussa	05-06-86	507
49.	Shri Basantkumar Parmanand	01-04-87	507
50.	Shri Nagesh Gyaneshwar	05-06-87	507
51.	Shri Anil Dewaji	04-06-86	507
52.	Shri Omprakash Battanarayan	04-06-86	507
53.	Shri Robinesh Laorus	04-06-86	507
54.	Shri Digambar Laxman	04-06-86	507
55.	Shri Ruplal Daulat	07-06-86	507
56.	Shri Ab. Ali Ab. Raheman	05-06-86	507
57.	Shri Rajesh Vithalrao	05-05-86	507
58.	Shri Sk. Ismail Sk. Hussain	05-06-86	507
59.	Shri Dipak Santosh	01-05-86	507
60.	Shri Prakash Tulshiram	04-05-86	507
61.	Shri Prakash Yashwant	04-06-86	507
62.	Shri Subhash Ramchanera	04-06-86	507
63.	Shri Ganesh Shamrao	04-06-86	507
64.	Shri Mahendra Singh Sukhdeosingh	13-06-86	507
65.	Shri Mukesh Madhukar	05-06-86	507
66.	Shri Baldeoprasad Ramdularc	04-05-86	507
67.	Shri Ravi Sopan	06-06-86	507
68.	Shri Uttam Gopalrao	06-06-86	507
69.	Shri Rajesh Ramkrishna	04-06-86	507
70.	Shri Sanjay Motiram	09-04-85	507
71.	Shri Ramesh Laxman Bisnc	04-06-86	507
72.	Shri Babu Jagat Naidu	04-06-86	507
73.	Shri Omprakash Sunderlal	06-06-86	507
74.	Shri Chandu Krishnarao	06-06-86	507
75.	Shri Manik Dashrath	06-06-86	507
76.	Shri Atul Bhaurao	05-06-86	507
77.	Shri Ajay Ramnath	19-05-86	507
78.	Shri Kishor Kisnrao	19-05-86	507
79.	Shri Sk. Afsal Sk. Rafiq	05-06-86	490
80.	Shri Jahir Rahimudullah	26-06-86	490
81.	Shri Munna Gyani	05-06-86	490
82.	Shri Anil Kashinath	06-06-86	490
83.	Shri Sk.Satar Sk. Jaffir	04-06-86	490
84.	Shri Rajesh Ramlal	04-04-86	490
85.	Shri Sk. Khalik Sk. Mohd	04-04-86	490
86.	Shri Robert Bialy	05-06-86	490
87.	Shri Nandu Hemchand	04-06-86	490
88.	Shri Ravind Nathu	04-06-87	490
89.	Shri Rajesh Baratilal	06-03-87	490
90.	Shri Sk. Farid Sharif Ahmad	05-06-86	490
91.	Shri Surendra Shriram	04-06-86	490
92.	Shri Madan Bhaurao	22-03-84	502
93.	Shri Gopi Nathu	04-06-86	502
94.	Shri Victor Yesu	04-06-86	502
95.	Shri Kashiram Baldeo	03-06-86	502
96.	Shri Vijay Kishanrao	03-06-86	502
97.	Shri Suresh Bhiwaji	03-06-86	502
98.	Shri Sunil Udhebhan	05-05-97	502
99.	Shri Chiman Lal Haggu	04-06-86	502
100.	Shri Gulab Mouj	04-06-86	502
101.	Shri Parsaram Bhikka	19-12-83	502
102.	Shri Subhash Rambhau	19-06-86	502
103.	Shri Sanjai Gopichand	19-06-86	502
104.	Shri Sunil Motiram Pikata	07-06-86	502
105.	Shri Rubin Yakub	07-06-86	502
106.	Shri Ramsundra Dhaniram	17-06-86	502
107.	Shri Bharat Gorelal	05-06-86	502

1	2	3	4
108.	Shri Anil Hiralal	19-03-86	502
109.	Shri Manoj Udhebhan	05-05-86	502
110.	Shri Sunil Jaikishan	23-04-86	502
111.	Shri Dadarao Laxman	30-03-86	502
112.	Shri Sanjai Niwruti	19-04-86	502
113.	Shri Shasikant Naratay	17-06-86	502
114.	Shri Yuraj Mahadeo	04-06-86	502
115.	Shri Suresh Udeshwar	04-06-86	502
116.	Shri Rajesh Sukhdeo	04-06-86	502
117.	Smt. Smt. Saroj Ravikumar	18-04-83	865
118.	Smt. Nirmal Bapurao	13-04-84	968
119.	Smt. Gulshan Bee	16-04-85	608
120.	Kusum Rajaram Tamakar	01-04-86	584
121.	Smt. Bhanumati Jagannath	15-04-84	608
122.	Smt. Sheela Bai Yadeo	01-04-79	1190
123.	Smt. Prarbatbai Zitru	17-05-83	550
124.	Smt. Hajrabegam Yasimkhan	01-04-84	607
125.	Smt. Manoram Shadashiv	26-03-84	500
126.	Smt. Chandrakala Chindu	14-04-84	500
127.	Smt. Sakuntala Banwarilal	17-04-88	480
128.	Smt. Kasubai Jaysingh	20-05-84	506
129.	Smt. Styabhama Ganpat	14-04-89	400
130.	Smt. Girja Gulab	15-04-84	400
131.	Smt. Girja Shakharam	15-04-84	400
132.	Smt. Muliyabai Kunjilal	16-04-84	400
133.	Shri Satish Shankar	15-05-87	400
134.	Shri Rambhao Jannath	02-4-83	200
135.	Shri Raju Yaswant	23-04-87	400
136.	Shri Vinod Megal	05-04-86	400
137.	Shri Kishor Meshram	01-04-85	400
138.	Shri Viliyen Jakap Pal	26-05-84	900
139.	Shri Ramesh Dongre	16-04-84	500
140.	Shri Sanjay Meshram	16-04-87	500
141.	Shri Chandrakant Kale	16-04-86	400
142.	Shri Manohar Baliram	05-05-84	500
143.	Shri Rajendra Joshi	05-05-84	600
144.	Shri Sk. Aslam Sk. Rafiq	04-06-86	400
145.	Shri Manohar Chaitram	16-04-86	400
146.	Shri Subhas Kasinath	04-06-86	400
147.	Shri Ramdularc Mukka	04-06-86	400
148.	Shri Dewanand Sadeshiv	04-06-86	400
149.	Shri Zanaklal Dendoo	04-06-86	400
150.	Shri Devidas Pannalal	04-06-86	400
151.	Shri Ashok Ganpat Dongre	04-06-86	400
152.	Shri Sk. Salim Sk. Chand	04-06-86	400
153.	Shri Dharampal Jairam	04-06-86	400
154.	Shri Viliam John	04-06-86	400
155.	Shri Shyamsundar Dhaniram	04-06-86	400
156.	Shri Akbar Ansari	04-06-86	400
157.	Shri Raju Zitruji	04-06-86	400
158	Shri Laxman Motiram	04-06-86	400
159.	Shri Govind Ramchand	04-06-86	400
160.	Shri Mohanand Aspak	30-03-87	400
161.	Shri Antony Philips	30-03-87	400
162.	Shri Dilip Laxman	30-03-87	400
163.	Shri Ramesh Laxman Randive	30-03-87	400
164.	Shri Vinay Shivshankar	30-03-87	400
165.	Shri Gangaprasad Raghunath	30-03-87	400
166.	Shri Dina Meouji	30-03-87	400
167.	Shri Sanjay Vishwanath	30-03-87	400
168.	Shri Mohd. Nayum	30-03-87	400
169.	Shri Anil Manikrao	30-03-87	400
170.	Shri Kamlesh Balaprashad	30-03-87	400
171.	Shri Durgaprasad Sumer	30-03-87	400
172.	Shri Narayan Rama	30-03-87	400
173.	Shri Ramesh Kumar Mahadeo	30-03-86	400
174.	Shri Bharat Kunjilal	30-03-86	400
175.	Shri Jagdish Shrawan	30-03-86	400
176.	Shri Gohendra Shrawan	30-03-86	400
177.	Shri Raju Gendlal	30-03-86	400
178.	Shri Mohansing Bihari Singh	30-03-86	400
179.	Shri Ajaju Rahaman	30-03-86	400
180.	Girish Babulal	30-03-86	400

1	2	3	4
181.	Shri Girwar Chotelal	1-4-89	400
182.	Shri Akram Ali	1-4-89	400
183.	Shri Ajay Anand	30-03-86	400
184.	Shri Arun Gyandeo	30-03-86	400
185.	Shri Ramdas Arjun	30-03-86	400
186.	Shri Sanjay Wasudeo	30-03-86	400
187.	Shri Suresh Mahadeo	30-03-86	400
188.	Shri Sunil Chintaman	30-03-86	400
189.	Shri Paul Albert	30-03-86	400
190.	Shri Prahlad Arjun Kale	30-03-86	400
191.	Shri Dilip Shiroyare	30-03-86	400
192.	Shri Pramod Bhagwati	30-03-86	400
193.	Shri Ramesh Gulabrao	30-03-86	400
194.	Shri Vijay Ramkrishna	30-03-86	400
195.	Shri Naresh Ajabrao	30-03-86	400
196.	Shri Raju Narayan	30-03-86	400
197.	Shri Nandlal Chotu	30-03-86	400
198.	Shri Ramesh Motiram	30-03-86	400
199.	Shri Suresh Buddhagi	30-03-86	400
200.	Shri Sitaram Ramlal	30-03-86	400
201.	Shri Ashok Raja	30-03-86	400
202.	Shri Arun Tulshiram	30-03-86	400
203.	Shri Anand Uttamrao	30-03-86	400
204.	Shri Sanjay Namdeo	1-04-87	400
205.	Shri Naresh Maroti	1-05-89	400
206.	Shri Sidhrath Meghraj	1-4-86	400
207.	Shri Baban Chandrabhan	1-4-86	400
208.	Shri Mukundlal Gorakhanath	3-8-87	400
209.	Shri Mahanand Bavichand	3-8-87	400
210.	Shri Bablu Edwad	3-8-87	400
211.	Shri Sunil Suryabhan	3-8-87	400
212.	Shri Arun Nilkanth	3-8-87	400
213.	Shri Rupchand Babulal	3-8-87	400
214.	Shri Gauttam Shamrao	3-8-87	400
215.	Shri Vijay Babulal	3-8-87	400
216.	Shri Maroti Sukhdeo	3-8-87	400
217.	Shri Ganesh Harichand	3-8-87	400
218.	Shri Manoj Gopichand	30-04-87	400
219.	Shri Ravindra Shaligram	30-04-87	400
220.	Shri Shasikar Bapurao	30-04-87	400
221.	Shri Kishor Amrut	30-04-87	400
222.	Shri Mukesh Ramchand	30-04-87	400
223.	Shri Laxman Bapurao	30-04-87	400
224.	Shri Mangal Nathu	30-04-87	400
225.	Shri Arun Vithalrao	30-04-87	400
226.	Shri Mahendra Sambhaji	30-04-87	400
227.	Shri Kairsingh Arjunsingh	30-04-87	400
228.	Shri Tulsidas Mishralal	30-04-87	400
229.	Shri Manohar Pundalik	30-04-87	400

229 and all other Waterman working in under Nagpur Division Nagpur Centre Railway.

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3087.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शीप एण्ड वूल रिसर्च इन्स्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं.-2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 976/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/160/2001-आई आर (सी एम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3087.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 976/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Sheep and Wool Research Institute, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/160/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. : 976/2005
Registered on : 16-9-2005
Date of Decision : 18-7-2007

Anoop Ram
S/o. Shri Kevaloo
R/o. Village Ashani,
P.O. Shiay
Tehsil and District Kullu (H.P.) ... Petitioner

Versus

The Director, CSSRI,
Avikanagar,
Tehsil Malpura,
District Tonk,
Rajasthan ... Respondent

APPEARANCE

For the Workman : Shri Y. S. Bajwa, AR

For the Management : Mr. R. K. Sharma, AR

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/160/2001-IR (CM-II) dated 6th August, 2002;

> "Whether the action of the Management of North Temperate Regional Station, Central Sheep & Wool Research Institute, Garsa District, Kullu (H.P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk Rajasthan in terminating the services of Shri Anoop Ram S/o. Shri Kewal Ram w.e.f. 1st July, 1998 is just and legal ? if not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K. S. Risan, Head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order of Labour Court, Jaipur in MA No.-Labour Court 165 of 69. Both, the workman as well as K. S. Risan, appeared as witness and were subject to cross-examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1993 and served them upto 1st July, 1998 when his services were illegally terminated; that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continue service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25-F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he worked was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands non suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case, reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a research Institute and a part of Indian Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a research Institute, is not business, engaged in Trade and Industrial activity, therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical Laboratory reported as 1997 (3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID no. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 4083/2000 decided on 11th Dec., 2002.

On merits the claim of the Management is that the claim of the workman projected in paras 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1996, on the eventuality of seasonal work and was disengaged in the year March, 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn. 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever

recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross-examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H. P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the Management, for 240 days in a calendar year. Dr. K. S. Risan who appeared as a witness for the Management proved his affidavit MW-1 and relied upon the letter no. 5437 dated 4th July, 1998. In cross-examination he admitted that the Management had not chargesheeted the workman nor they had terminated his services. Infact since the Management did not receive the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the Management used to engage the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract Labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the consideration of this Tribunal, is whether the Management, as detailed in the case had terminated the services of Shri Anoop Ram w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he had joined duty with the Management, in the year 1993. In their Written Statement the Management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the Management had terminated the service of the workman on 1st July, 1998. The Management, as stated earlier admitted in para no. 2, on merit, that the workman was disengaged in March, 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supposed to prove that on the day his services were disengaged, he had put in not less than a year of service to the Management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement admitted the detail of working days shown by the Management in their Written Statement, as correct. He, however, claimed that he had served the Management for 240 days in the years 1984 and 1988. By his own statement he admitted that he had not served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the Act for which the sine quo non is "having served the Management continuously for 240 days 12 months preceding the date of termination of his services. The workman has utterly failed to prove that he had served the Management for 240 days. He admitted the number of days he had served for the Management as detailed in para 10 of the Written Statement. According to the detail given, the workman did not serve the Management for 240 days in the calendar year preceding the date of termination of his services.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he

was a workman who had served the Management for specified period, as required under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3088.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं.-2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 879/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-23012/1/2001-आई आर (सी एम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3088.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 879/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Bhakra Beas Management Board, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-23012/1/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. : 879/2005
Registered on : 9-9-2005
Date of Order : 9-8-2007

Hakim Singh
S/o. Mewa Singh,
Village and Post Office Badarpur,
Tehsil Kalka
District Panchkula ... Petitioner

Versus

The Ececutive Engineer,
O & M Division, BBMB,
Dhulkot,
District Ambala ... Respondent

APPEARANCE

For the Workman : Shri R. K. Singh Parmar AR

For the Management : Shri N. K. Zakhmi Advocate

AWARD

The workman is present alongwith his representative. Management is also present through their Counsel.

Shri R. K. Singh Parmar, the rep. of the workman states that after examining the documents provided by the Management, he is of the opinion that the reference is not proper for technical reasons, therefore, he cannot prove his claim by any evidence. He has offered to withdraw from the reference. His statement, in this regard has been recorded. Since the workman has shown his inability to produce any evidence to show that his services were terminated by the Executive Engineer (O & M) Division, BBMB Dhulkot District Ambala w.e.f. 30th June, 1999 and he had also not regularized him, it is to be taken that the workman has no evidence in support of his case. On record there is no evidence to show that the Executive Engineer (O & M) Division, BBMB Dhulkot District Ambala had terminated the services of the workman w.e.f. 30th June, 1999 and they had further violated the provisions of the I.D Act. 1947 in not regularizing his services. The reference made by the Ministry of Labour, Government of India vide their No. L-23012/1/2001-IR (CM-II) dated 20th/21st Sep., 2000 is answered against the workman holding that the workman has failed to show that the executive Engineer, referred to in the reference, had terminated his services and had illegally also not regularized him in service. Therefore, the workman is not entitled to any relief. The reference is answered accordingly. Let a copy of this award be sent to the appropriate Govt. for necessary action and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3089.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शीप एण्ड वूल रिसर्च इन्स्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं.-2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 985/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/177/2001-आई आर (सी एम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3089.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 985/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Sheep and Wool Research Institute, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/177/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. : 985/2005
Registered on : 16-9-2005
Date of Decision : 18-7-2007

Uttam Singh
S/o Shri Ratan Singh,
Village and PO : Shyah,
District Kullu (H.P.) ... Petitioner

Versus

The Director, CSSRI,
Avikanagar,
Tehsil Malpura,
District Tonk,
Rajasthan ... Respondent

APPEARANCE

For the Workman : Shri Y. S. Bajwa, AR

For the Management : Mr. R. K. Sharma, AR

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/177/2001-IR (CM-II) dated 6th August, 2002;

> "Whether the action of the management of North Temperate Regional Station, Central Sheep & Wool Research Institute, Garsa District, Kullu (H.P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk Rajasthan in terminating the services of Shri Uttam Singh S/o Shri Ratan Singh w.e.f. 1st July, 1998 is just and legal ? if not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K. S. Risan, Head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order of Labour Court, Jaipur in MA No.-Labour Court 165 of 1969. Both, the workman as well as K. S. Risan, appeared as witness and were subject to cross examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1993 and served them upto 1st July, 1998 when his services were illegally terminated: that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continuous service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25-F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he worked was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands non-suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case, reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a Research Institute and a part of Indian Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a Research Institute, is not business, engaged in Trade and Industrial activity,

therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical Laboratory reported as 1997 (3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID No. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 4083/2000 decided on 11th Dec., 2002.

On merits the claim of the Management is that the claim of the workman projected in para 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1996, on the eventuality of seasonal work and was disengaged in the year March, 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn. 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H. P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the Management, for 240 days in a calendar year. Dr. K. S. Risan who appeared as a witness for the Management proved his affidavit MW-1 and relied upon the letter No. 5437 dated 4th July, 1998. In cross examination he admitted that the Management had not chargesheeted the workman nor they had terminated his services. In fact since the Management did not receive the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the Management used to engage the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract Labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the considerastion of this Tribunal, is whether the Management, as detailed in the case had terminated the services of Shri Uttam Singh w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he had joined duty with the Management, in the year 1993. In their Written Statement the Management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the Management had terminated the service of the workman on 1st July, 1998. The Management, as stated earlier admitted in para No. 2, on merit, that the workman was disengaged in March, 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically Section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supposed to prove that on the day his services were disengaged, he had put in not less than a year of service to the Management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement deposed that he does not possess any proof to show that he had served the Management for 240 days. He admitted the detail of working days shown by the Management in their Written Statement, as correct. He further admitted that he had not served the Management for 240 days in any calendar year. Thus the workman admitted that he had not served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the

Act for which the sine qua non is "having served the Management continuously for 240 days 12 months preceding the date of termination of his services." The workman has utterly failed to prove that he had served the Management for 240 days. He stated nothing about the number of days the Management detailed in para No. 1 of their Written Statement. According to the detail given, the workman did not serve the Management for 240 days in any calendar year.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he was a workman who had served the Management for specified period, as requird under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3090.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शीप एण्ड वूल रिसर्च इंस्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 987/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/179/2001-आई आर (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3090.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 987/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Sheep and Wool Research Institute, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/179/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 987/2005

Registered on 16-9-2005

Date of Decision : 18-7-2007

Luder Chand S/o Shri Thakur Das, Village Tundanan, P. O. Diyar, District Kullu (H. P.). ... Petitioner

Versus

The Director, CSSRI, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan. ... Respondent

Appearance :

For the Workman : Shri Y. S. Bajwa, AR

For the Management : Mr. R. K. Sharma, AR.

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/179/2001-IR (CM-II) dated 6th August, 2002;

"Whether the action of the Management of North Temperate Regional Station, Central Sheep and Wool Research Institute, Garsa District, Kullu (H. P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan in terminating the services of Shri Luder Chand S/o Shri Thakur Dass w.e.f. 1st July, 1998 is just and legal ? If not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K. S. Risan, Head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order of Labour Court, Jaipur in MA No. Labour Court 165 of 1969. Both, the workman as well as K. S. Risan, appeared as witness and were subject to cross examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1993 and served them upto 1st July, 1998 when his services were illegally terminated; that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continuous service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he worked was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands no suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case, reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a research Institute and a part of Indian Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a research Institute, is not business, engaged in Trade and Industrial activity, therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical Laboratory reported as 1997(3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID No. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 4083/2000 decided on 11th December, 2002.

On merits the claim of the Management is that the claim of the workman projected in para 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1996, on the eventuality of seasonal work and was disengaged in the year 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H.P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the management, for 240 days in a calendar year. Dr. K.S. Risan who appeared as a witness for the Management proved his affidavit MW-1 and relied upon the letter No. 5437 dated 4th July, 1998. In cross examination he admitted that the Management had not charge sheeted the workman nor they had terminated his services. In fact since the Management did not receive the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the management used to engage the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract Labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the consideration of this Tribunal, is whether the Management, as detailed in the case had terminated the services of Shri Ludar Chand w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he

had joined duty with the Management, in the year 1993. In their Written Statement the Management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the Management had terminated the service of the workman. 1st July, 1998. The Management, as stated earlier admitted in para No. 2, on merit, that the workman was disengaged in March, 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically Section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supposed to prove that on the day his services were disengaged, he had put in not less than a year of service to the management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement admitted the detail of working days shown by the Management in their Written Statement, as correct. He further admitted that he had not served the Management for 240 days in any calendar year. Thus the workman admitted that he had not served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the Act for which the sine quo non is "having served the Management continuously for 240 days 12 months preceding the date of termination of his services. The workman has utterly failed to prove that he had served the Management for 240 days. He admitted the number of days he had served for the Management as detailed in para 10 of the Written Statement. According to the detail given, the workman did not serve the Management for 240 days in any calendar year.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he was a workman who had served the Management for specified period, as required under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3091.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शीप एण्ड वूल रिसर्च इंस्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 986/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/175/2001-आई आर (सी एम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3091.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 986/2005) of Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the Management of Central Sheep and Wool Research Institute and their workmen which was received by the Central Government on 27-9-2007.

[No. L-42012/175/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 986/2005

Registered on 16-9-2005

Date of Decision : 18-7-2007

Devi Chand, S/o Shri Thaulu Ram, Village Bhosa, PO : Diyar, District Kullu (H. P.). ... Petitioner

Versus

The Director, CSSRI, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan. ... Respondent

Appearance :

For the Workman : Shri Y. S. Bajwa, AR

For the Management : Mr. R. K. Sharma, AR.

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/175/2001-IR (CM-II) dated 6th August, 2002 :

> "Whether the action of the Management of North Temperate Regional Station, Central Sheep and Wool Research Institute, Garsa District, Kullu (H. P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan in terminating the services of Shri Devi Chand S/o Shri Thaulu Ram w.e.f. 1st July, 1998 is just and legal ? If not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K. S. Risan, Head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order of Labour Court, Jaipur in MA No. Labour Court 165 of 1969. Both, the workman as well as K. S. Risan, appeared as witness and were subject to cross examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1993 and served them upto 1st July, 1998 when his services were illegally terminated; that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continuous service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he worked was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands non suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a research Institute and a part of Indian Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a research Institute, is not business, engaged in Trade and Industrial activity, therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical Laboratory reported as 1997(3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID No. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 4083/2000 decided on 11th December, 2002.

On merits the claim of the Management is that the claim of the workman projected in para 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1996, on the eventuality of seasonal work and was disengaged in the year 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H.P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the management, for 240 days in a calendar year. Dr. K.S. Risan who appeared as a

witness for the Management proved his affidavit MW-1 and relied upon the letter No. 5437 dated 4th July, 1998. In cross examination he admitted that the Management had not chargesheeted the workman nor they had terminated his services. In fact since the Management did not receive the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the management used to engage the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract Labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the consideration of this Tribunal, is whether the Management, as detailed in the case had terminated the services of Shri Devi Chand w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he had joined duty with the management, in the year 1993. In their written Statement the management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the management had terminated the service of the workman out 1st July, 1998. The management, as stated earlier admitted in para No. 2, on merit, that the workman was disengaged in March, 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically Section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supposed to prove that on the day his services were disengaged, he had put in not less than a year of service to the management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement admitted the detail of working days shown by the Management in their written Statement, as correct. He however claimed that he had served the Management for 240 days in the year 1980. By his own statement he admitted that he had not served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the Act for which the sine qua non is having served the Management continuously for 240 days 12 months preceding the date of termination of his services. The workman has utterly failed to prove that he had served the Management for 240 days. He admitted the number of days he had served for the Management as detailed in para 10 of the Written Statement. According to the detail given, the workman did not serve the Management for 240 days in calendar year preceding the date of his termination.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or/and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he was a workman who had served the Management for specified period, as required under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3092.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल शीप एण्ड वूल रिसर्च इंस्टीट्यूट के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 988/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/154/2001-आई आर (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3092.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 988/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Central Sheep and Wool Research Institute, and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/154/2001-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 988/2005

Registered on 16-9-2005

Date of Decision : 18-7-2007

Brahma Nand S/o Shri Dele Ram, Village Bhora, PO. Diyar, District Kullu (H.P.). ... Petitioner

Versus

The Director, CSSRI, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan. ... Respondent

Appearance :

For the Workman : Shri Y. S. Bajwa, AR

For the Management : Mr. R. K. Sharma, AR.

AWARD

The following dispute has been received from Ministry of Labour, Government of India for adjudication vide their order No. L-42012/154/2001-IR (CM-II) dated 6th August, 2002 :

> "Whether the action of the Management of North Temperate Regional Station, Central Sheep and Wool Research Institute, Garsa District, Kullu (H. P.) represented through the Head North Temperate, Regional Station, Garsa and the Director, Central Sheep and Wool Research Institute, Avikanagar, Tehsil Malpura, District Tonk, Rajasthan in terminating the services of Shri Brahma Nand S/o Shri Dele Ram w.e.f. 1st July, 1998 is just and legal ? If not, to what relief the workman is entitled to and from which date ?"

In response to the notice issued to the parties the workman appeared and filed his Claim Statement. The Management filed short Written Statement but later on filed detailed Written Statement dated 30th August, 2005. The workman filed an application for striking of defence of the respondents. The respondents instead of filing reply to the application filed detailed Written Statement and the affidavit of Dr. K. S. Risan, Head of the Regional Institute. The workman also filed his affidavit in support of his claim. The parties have placed on record photocopies of a number of documents, including the award passed by CGIT-cum-Labour Court, Chandigarh dated 23rd July, 2002, order of Labour Court, Jaipur in MA No. Labour Court 165 of 1969. Both, the workman as well as K. S. Risan, appeared as witness and were subject to cross-examination by the opposite side.

The claim of the workman is that he had joined service with the Management as labourer in the year 1983 and served them upto 1st July, 1998 when his services were illegally terminated; that he used to receive his salary after a month at the rate of Rs. 83 per day; that the post, against which he was engaged, is still existing; that the Management did not issue any notice to him before the termination of his services nor paid him the wages for the notice period. Retrenchment compensation was also not paid although he had put in 240 days continuous service for the Management within 12 months preceding the date of termination of his services. They also did not hold any inquiry against him. Thus they terminated his services violating Section 25F of the I.D. Act, hereinafter to be referred as "Act". They recruited fresh hands and also retained his juniors but terminated his services. Thus exercised unfair labour practice; that the workman was engaged through employment exchange and the post on which he worked was perennial in nature and not seasonal.

Since the Management has now filed the detailed Written Statement, the short Written Statement filed by them stand merged with the detailed Written Statement. The Management has opposed the claim of the workman. They have raised the preliminary objections to the maintainability of the reference stating that the workman has not approached this Tribunal with clean hands therefore, the reference is not maintainable. The workman had approached the CAT and then the High Court of H.P., by way of writ, which was dismissed, but the workman has concealed these facts from this Tribunal, therefore, he stands non suited on the ground of withholding the facts as is commanded by the Apex Court of the country in the case, reported as AIR 1994 Supreme Court, 853. Their next plea is that the Management is a Research Institute and a part of Indian Council of Agriculture, a society registered under a Society's Registration Act. Their employees are governed by rules and regulations of the Central Government. The Management being a Research Institute, is not business, engaged in Trade and Industrial activity, therefore they cannot be claimed to be an Industry in view of the judgement of the Supreme Court in the case of Physical Laboratory reported as 1997(3) RSJ 215. This Tribunal, it is claimed by the Management also held a similar view in the case of ID No. 22 of 1990 and the same was the view of Labour Court, Jaipur, as expressed by them in the case of Labour Court 165 of 1969. Rajasthan High Court in its Jaipur Bench also held the same view in the case of CWP 4083/2000 decided on 11th December, 2002.

On merits the claim of the Management is that the claim of the workman projected in para 1 to 7 is wrong and incorrect. Their case is that the workman was engaged as a daily wager in the year 1986, on the eventuality of seasonal work and was disengaged in the year March, 1998. The Indian Council of Agriculture Research prohibited the engagement of daily wager by their letter Admn. 1/85/5437 dated 4th July, 1998. The Management admitted that they had not issued any notice to the workman, nor they ever recruited fresh daily wagers, in place of the workman nor the workman served the Management for 240 days, 12 months preceding the date of his disengagement. None of his juniors were retained while his services were disengaged. Reiterating the claim that they cannot be styled

as an Industry, it is submitted by them that the workman had served the Management on the days as shown in para 1 and as per that details, the workman had not served the Management for 240 days in any of the year nor within 12 months preceding the date of his disengagement. They denied that the Management did not follow the procedure or exhibited an element of discrimination, illegality while dispensing with the services of the Management.

The workman appeared as a witness in the case and in cross-examination admitted that he has no document to show that he was engaged in the year 1983 or that his services were terminated on 1st July, 1988. According to him the Management had not prepared any seniority list. He also could not say that the Management was engaged in the research. Admitting that he had filed an application before CAT and Writ Petition before H.P. High Court, he denied that he was engaged in the year 1986 or that the work, which he did was seasonal. He claimed that all the work is now being done by a contractor. He further admitted that the detail of working days given in the statement incorporated in the Written Statement, is correct and as per that statement he had not served the Management, for 240 days in a calendar year. Dr. K.S. Risan who appeared as a witness for the Management proved his affidavit MW-1 and relied upon the letter No. 5437 dated 4th July, 1998. In cross-examination he admitted that the Management had not charge sheeted the workman nor they had terminated his services. In fact since the Management did not receive the sanction to engage the workmen, therefore, no workman was engaged. He could not say which of the workman was junior to the workman and to whom the Management had engaged ignoring the claim of the workman. According to him the Management used to engage the workmen after getting the permission and after holding interviews. He admitted the contents of order dated 8th Sep., 2003 and stated that the Management is not engaged in any business but stated that as per the directions of the Management Centre in getting available work done through the contract labour.

I have gone through the file and have also considered the submissions made by the parties through their Counsel.

The matter, which is under the consideration of this Tribunal, is whether the Management, as detailed in the case had terminated the services of Shri Brahma Nand w.e.f. 1st July, 1998, and whether that disengagement was just and legal. If not to what relief the workman is entitled to and from which date. The workman in his statement categorically admitted that he has no proof to show that he had joined duty with the Management, in the year 1993. In their written statement the Management admitted that the workman was disengaged in the year 1998 and he had joined the service with the Management, as daily wager, in the year 1986. The reference required to be answered is whether the Management had terminated the service of the workman on 1st July, 1998. The management, as stated earlier admitted in para No. 2, on merit, that the workman was disengaged in March, 1998. Thus the disengagement of the workman by the Management is not denied and even the year of his disengagement is not denied. So it is proved that the services of the workman were disengaged in the year 1998.

What is next to be seen is whether that disengagement was valid or not. Related to this question is whether the Management while disengaging the workman, violated some provisions of law which gave protection to the workman. In other words it has to be seen whether the Management followed the provisions of Act, more specifically Section 25-F of the Act before terminating his services. The answer to this follows on thus. In order to get the protection under Section 25-F of the Act, the workman was supposed to prove that on the day his services were disengaged, he had put in not less than a year of service to the Management, his employer. The year of service is defined in Section 25-B, according to which, the person claiming himself to be workman should prove that he had served the Management for not less than 240 days before he was engaged. The workman in his statement admitted the detail of working days shown by the Management in their written Statement, as correct. He further admitted that he had not served the Management for 240 days in any calendar year. Thus the workman admitted that he had not served the Management for 240 days 12 months preceding the date of termination of his services, therefore, he cannot claim the protection under Section 25-F of the Act for which the sine qua non is "having served the Management continuously for 240 days 12 months preceding the date of termination of his services. The workman has utterly failed to prove that he had served the Management for 240 days. He admitted the number of days he had served for the Management as detailed in para 10 of the Written Statement. According to the detail given, the workman did not serve the management for 240 days in any calendar year.

As discussed above the workman has failed to show that he had served the Management for the period as required under Section 25-F of the Act, therefore, he was entitled to the protection given by the said provision. The Management thus did not violate the provision of law when they did not give notice to the workman before the termination of services or/and when they did not pay him the wages for the notice period and the retrenchment compensation, as they were not under an obligation to pay the same. Since the workman has failed to prove that he was a workman who had served the Management for specified period, as required under Section 25-F of the Act. In the circumstances the disengagement of the workman, in the year 1998 or on 1st July, 1998, was just and legal and the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3093.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 409/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-22012/475/1999-आई आर (सी-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3093.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 409/2005) Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 27-09-2007.

[No. L-22012/475/1999-IR (C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT:

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 409/2005

Registered on : 19-08-2005

Date of Order : 10-08-2007

Maya Ram S/o Jag Ram,
C/o. FCI Karamchari Sangthan,
BMS Aggarsain Chowk,
Mohan Nagar,
Kurukshetra ... Petitioner

Versus

District Manager,
FCI, Kurukshetra ... Respondent

APPEARANCE

For the Workman : Mr. A.K. Batra
Advocate

For the Management : Mr. Santok Singh
Advocate

AWARD

The workman continues to be absent. After Mr. A.K. Batra who was representing him submitted that he has no instructions to appear, a notice under R/C vide Postal Receipt No. 438 dated 17th May,2007 was issued to the workman asking him to appear and produce his evidence. The R/C carrying the notice has not been received back nor the workman is present. It is more than two months ago that the notice was sent and it leads to the presumption that the workman had received the notice, but he has not chosen to appear in the case. It further, gives rise to the conclusion that he is no more interested in the case.

The Government of India, Ministry of Labour Order No. L-22012/475/99-IR (C-II) dated 15th Dec., 2003 referred the dispute to this Tribunal with a direction to find out whether the action of the Management of FCI of India, Kurukshetra in terminating the services of Shri Maya Ram was legal and justified and if not to what relief he was entitled to.

The parties appeared and filed their pleadings in the shape of Claim Statement of the workman and Written Statement of the Management rejoinder of the workman, his affidavit and affidavit of the District Manager, M.S. Bhullar witness of the Management. In reply to the claim of the workman, that he was engaged by the FCI Jagadhari in January, 1993 on a monthly salary of Rs. 930 and the Management terminated his services on 9th Sep.,1996, without following the provisions of I.D. Act, hereinafter referred to as Act, the Management stated that there never existed a relationship of employee and employer between the parties; and that the workman had been engaged by Messrs. Ex-Servicemen Service Society, Mohan Nagar, Kurukshetra, and he was never engaged by the Management nor his services were terminated by them, therefore, there was no question of termination of his services by the Management.

The parties supported have their claims with the affidavits of their witnesses i.e. of a workman and M.S. Bhullar, the District Manager. On record I find a copy of the agreement executed between Ex-Servicemen Society and the Management and a copy of log book claimed to be that of the Management produced by the workman. But the record of the file shows that none of the parties proved the documents or stood to the cross-examination of the opposite side. The documents produced have not been proved.

On record I find only the pleadings of the parties and the documents which are countered by the other side. In this situation I do not find any evidence to show that the workman was engaged by the Management and it was they who had terminated his services in violation of the provisions of the Act, therefore his disengagement was illegal and unjustified. Since the workman has virtually

withdrawn from prosecuting his case and on record I do not find any evidence to show that he was disengaged by the Management in violation of provisions of the Act he is entitled to no relief. For want of evidence the reference is answered against him. Let a copy of this award be sent to the appropriate Govt. for necessary action and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3094.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ सं. 21/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-22012/430/1993-आई आर (सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3094.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/1994) of, the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 27-09-2007.

[No. L-22012/430/1993-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Md. Sarfaraz Khan, Presiding Officer

Reference No. 21 of 1994

PARTIES

The Agent, Ratibati Colliery Workshop,
ECL, Kalipahari, Burdwan

Vrs.

The President,
Colliery Mazdoor Union,
Kalipahari, Burdwan

REPRESENTATIVES:

For the Management	:	Sir P.K. Das, Advocate
For the Union (Workman)	:	Sri M. Mukherjee, Advocate

Industry : Coal State : West Bengal

Dated the 11-09-2007

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/430/93-IR (C.II) dated 28-09-1994 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whetehr the action of the management Ratibati Workshop of ECL in not promoting Sh. L.K. Roy from Grade 'C' to Grade 'B' without considering the norms of cadre promotion scheme is legal and justified? If not to what relief the concerned workman is entitled to?"

After having received the Order No. L-22012/403/93-IR (C.II) dated 28-09-1994 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication of the dispute a reference case No. 21 of 1994 was registered on 19-12-94 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In compliance of the said order notices by the registered post were issued to the parties concerned. Sir P.K. Das, Advocate and Sri M. Mukherjee, Advocate appeared in the Court to represent the Management and the union respectively.

From the perusal of the record it transpires that earlier a reference case No. 8 of 1994 was received vide order No. L-22012/430/93-IR (C-II) dated 25-3-94 for adjudication from the Govt. of India, Ministry of Labour, New Delhi. The dispute is between the same parties on the same subject, so both the records were tagged with each other. Both the parties had appeared in the court on summons and had filed their written statement in support of their case.

On perusal of the record it transpires that the record was fixed for hearing but the union left taking any step on its behalf since 22-11-06 to 11-09-07. Several directions and opportunities were given to the union to appear in the court and take suitable steps on its behalf but unfortunately neither the learned lawyer of the union nor the union itself appeared in the court to take any step. In the prevailing facts and circumstances of the case it is not just and proper or advisable to keep this old reference pending any more in anticipation of appearance of the union. As such it is hereby

ORDERED

that let a "No Dispute Award" be and the same is passed. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

Md. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3095.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्लू.डी. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 20/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/71/2004-आई आर (सी एम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3095.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Central Public Works Department and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/71/2004-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIGING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

PRESENT:

R.N. Rai, Presiding Officer

I.D. No. 20/2005

Sh. B.K. Prasad ... 1st Party

Sh. A.K. Gupta ... 2nd Party

In the matter of:

Shri Laljeet Yadav & Ors.,
C/o General Secretary,
CPWD Mazdoor Union,
Room No. 95, 1/10,
Jamnagar House, Shahjahan Road,
New Delhi

Versus

The Director General of Works,
CPWD, Nirman Bhawan,
New Delhi-110011

AWARD

The Ministry of Labour by its letter No.L-42012/71/2004-IR (CM-II) Central Government dt. 18-2-2005 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the demand of the CPWD Mazdoor Union for equal wages for equal work and regularization of the services of contract labourers, namely S/Shri Laljeet Yadav, Wireman; Satish Kumar, Wireman; Ajay Kumar, Khalasi; Omkar Singh, Wireman; Yogender, Wireman & Ram Ganesh, Khalasi in Electrical Divisions 4 & 14 of the Central Public Works Department, New Delhi is legal and justified? If yes to what relief these workmen are entitled and from which date."

The workmen applicants have filed claim statement. In the claim statement it has been stated that the details of the workmen i.e. their names, date of birth, category, designation, qualifications, technical qualifications, first entry, Division in which they are attached, working place and the name of contractor(s) are indicated in Annexure-A.

That Shri Laljeet Yadav and Shri Satish Kumar is working as Wireman and Sh. Ajay Kumar is working as Khalasi in ED No. 14, Sub-division-4, CPWD, Pragati Maidan, New Delhi and Shri Omkar Singh and Yogender Singh is working as Wireman and Shri Ram Ganesh is working as Khalasi and they are performing their duties under ED No. 4, Sub-division-2, CPWD, Sewa Bhawan, R. K. Puram, New Delhi.

That the workmen had filed the Writ Petition before the Hon'ble High Court of Delhi and as per the directions of the Hon'ble Court, they were allowed to work under the management and if the contractors were changed, they worked continuously as per the order of the said Hon'ble High Court of Delhi and their case of regularization and abolition was referred to the Ministry of Labour.

That the Ministry of Labour in exercise of powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (37 of 1970), the Central Government, in consultation with the Central Advisory Contract Labour Board prohibited the employment of the contract labour in the process, operation or work specified in the schedule, in the office/establishment of Central Public Works Department, Ministry of Urban Development & Employment, New Delhi and the Notification for prohibiting the employment of Khalasi etc. were notified by the Ministry of Labour Notification dated 21-07-2002, in the extraordinary Gazette of the Govt. of India

in Para-II, Section 3 and Sub-section (2). Copy of the said notification is annexed as Annexure-B.

That after the said notification, the following workmen were to be treated as direct employees of the management of CPWD and their status is of a daily rated workers directly employed by the management :

Name	Designation	First Entry	Division
Laljeet Yadav	Wireman	23-03-1988	ED.XIV/IV
Satish Kumar	Wireman	20-10-1998	-do-
Ajai Kumar	Khalasi	20-10-1998	-do-
Omkar Singh	Wireman	15-04-1997	ED.V/II
Yogender Singh	Wireman	01-05-1997	-do-
Ram Ganesh	Khalasi	16-12-1999	-do-

That the above workmen have been getting only minimum wages fixed by the appropriate government from time to time i.e. Wireman are getting skilled and Khalasis are getting un-skilled wages but the daily wages workers in CPWD have been getting equal wages in the time scale with all the allowances except increments attached to the category but the said wages denied to these workmen. Copy of the order issued by the CPWD management is annexed as Annexure-C with this statement of claim.

That in CPWD, daily rated workers in the category of Wiremen and Khalasi have been getting their wages in time scale plus DA, ADA, HRA, CCA, IR except increment. Now these workers are also entitled to the wages fixed in the time scale from the date of their initial employment being skilled workmen.

That as per the judgement of the Hon'ble Supreme Court in the matter of Surinder Singh and Others, the daily rated workers are also entitled to be regularized in the time scale after completion of 6 months of their continous service.

That the technical qualifications for regular employment in the category of wiremen, the second class licence is required and S/Shri Laljeet Yadav, Satish Kumar, Omkar Singh and Yogender Singh are having the essential technical qualifications and Ajay Kumar and Ram Ganesh are performing their duties as Khalasi, so they have acquired sufficient experience for working as unskilled labour with the management of CPWD.

That the workmen connected with the dispute are entitled for equal pay for equal work and also regularization in the category of skilled and unskilled workmen being Wiremen and Khalasi respectively.

That the pay scale of Wiremen is the time scale of Rs. 3050-4590 and pay scale of Khalasi is in time scale of Rs. 2550-3200 and the wiremen who are performing the duty of wiremen and the work performing their duties as Khalasis are entitled equal pay and regularization in these pay scale.

That non-payment of equal wages for equal work and non-regularization of the services of these workmen is illegal as well as unjustified.

The management has filed written statement. In the written statement it has been stated that the statement of claim filed by the claimants is nothing but misuse and abuse of process of law. No cause of action has accrued to the claimants to file the present claim and the same has been filed for ulterior reasons. At the very outset it is clarified that there is no employer-employee relationship between the claimants and the management and the complaint/claim is not maintainable by the claimant against the management under the provisions of ID Act, 1947.

That the management have availed the services of private agency for performing the work in public interest. It is submitted that the claimants have been engaged by such a private agency and are being paid by such agency. The present claimants are being controlled, commanded, supervised and paid by such private agency.

That in the facts and circumstances of the case the workmen have no cause of action and no relief is maintainable against the replying management.

That the applicants from Sl. No. 1 to 3 i.e. Shri Laljeet Yadav, Wireman; Shri Satish Kumar, Wireman and Shri Ajay Kumar, Khalasi were engaged by M/s. Naini Electricals, 34, Samaspur Jagir, Patparganj, New Delhi for the work in the premises of Andaman and Nicobar Guest House i.e. one of the site of SD IV/Elect. Divn. 14. The applicants at Sl. No. 4 and 6 i.e. Shri Omkar Singh, Wireman and Shri Ram Ganesh, Khalasi are the employees of M/s. N. S. Rawats, UK Enterprises, C-3/32, Dayalpur Ext., Delhi-110094 for the work at Bihar Niwas while the applicant at Sl. No. 5 i.e. Shri Yogendra Singh, Wireman is the employee of M/s. Aero Electrical, A-12, Acharya Niketan, Mayur Vihar, Phase-I, Delhi-110091 for the work at AARDO building under the control of SD-II/ED V.

That it is submitted that the demand of the CPWD Mazdoor Union for equal wages for equal work and regularization of the services of contract Labourers, namely S/Shri Laljeet Yadav, Wireman; Satish Kumar, Wireman; Ajay Kumar, Khalasi; Omkar Singh, Wireman; Yogendra, Wireman and Ram Ganesh, Khalasi in Electrical Division No. 5 (wrongly mentioned as Electrical Divn. 4) and Electrical Divn. No. 14 of the CPWD, New Delhi is neither legal nor justified and not maintainable for grant of equal wages for equal work and regularization of their services in the management is as per the following facts and guidelines issued from time to time.

That the contents of the corresponding para need reply in view of the facts and submissions made in

preliminary submission as submitted hereinabove and the contents of the same may be read as reply to this para also.

It is submitted that the CPWD has awarded the specific work of providing maintenance and operation of electrical services to the aforesaid contractors and the said contractors are performing the awarded job in terms of the contract and the applicants herein are working for the said contractors in his employee-employer relationship.

It is however submitted that the above workers have been employed against the Deposit work for which regular staff is not required to be posted as this is not perennial nature of work for CPWD and can be discontinued at any time. The workman was an employee of the contractor to whom contract has been awarded for execution of work and having no relation with CPWD. It is further submitted that the contract has not been awarded for employment of wireman/khalasi and when a job is to be done, the contractor may employ labour as in all the contracts for the work to be executed by the department on contract. It is further submitted that the workman is not entitled for initiation of any type of proceedings or claim, as the said workmen have never been engaged by CPWD. It is further submitted that there has never been master/servant relationship between the workman and the management. It is added that the Hon'ble Supreme Court has over-ruled the judgment dated 30-08-2001 in Air India case vide their subsequent judgment in the case of SAIL Vs. National Union for Water Front Workers. The extract of the judgment at sub-paras (3) to (6) of para 121 of the judgment states that neither section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labourers on issuing a notification by appropriate government under sub section (1) of section 10, prohibiting employment of contract labourer, in any process, operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of the contract labourer working in the concerned establishment.

There is no employer-employee relationship between the claimants and the management in view of the facts stated herein and the complaint/claim is not maintainable by the claimant against the management under the provisions of ID Act, 1947. It is reiterated that the applicant at Sl. No. 1 to 3 i.e. Shri Laljeet Yadav, Wireman, Shri Satish Kumar, Wireman and Shri Ajay Kumar, Khalasi were engaged by M/s. Naini Electricals, 34, Samaspur Jagir, Patparganj, New Delhi for the work in the premises of Andaman and Nicobar Guest House i.e . one of the site of SD IV/Elect. Divn. 14. The applicants at Sl. No. 4 and 6 i.e. Shri Omkar Singh, Wireman and Shri Ram Ganesh, Khalasi are the employees of M/s. N.S. Rawat, UK Enterprises, C-3/32, Dayalpur Ext., Delhi-110094 for the work at Bihar Niwas while the applicant at Sl. No. 5 i.e. Shri Yogendra Singh, Wireman is the employee of M/s. Aero Electrical, A-12, Acharya Niketan, Mayur Vihar, Phase-I, Delhi-110091 for the work at AARDO building under the control of SD-II/ED V.

It is submitted that any grievances pertaining to the wages and/or anything else is not maintainable against the replying management as the applicants are the employees of the aforesaid contractors.

The claim by the petitioner and others are denied on the basis of already decided similar cases by Hon'ble Supreme Court wherein the court has over-ruled the judgment dated 30-08-2001 vide the subsequent judgment in the case of SAIL Vs. National Union for Water Front Workers.

The workmen applicants have filed rejoinder. In their rejoinder they have reiterated the averments of their claim statement and have denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

From pleadings of the parties the following issues arise for adjudication :

(1) Whether there is employer-employee relationship between the management and the workmen & the duties performed by the workmen are perennial in nature and the workmen are entitled to regularization?

(2) Whether the rule of "equal pay for equal work" is applicable to the workmen?

(3) Relief if any.

ISSUE NO. 1

It was submitted from the side of the workmen applicants that they are working under the control and supervision of the management right from 1997, 1998 and 1999. It was also submitted that M/o Labour has prohibited the employment of the contract labour in the process/ operation or work specified in the schedule in the office/ establishment of CPWD, M/o Urban Development and Employment, New Delhi and the notification for prohibition of employment of Khalasi were notified by the M/o Labour. Notification dated 21-07-2002 has been notified in the extra-ordinary gazette of the GOI in Part-II Section 3 of the sub-section 2.

It was further submitted that after prohibition of contract labour w.e.f. 21-07-2002 the workmen have been still continuing their work and they should be atleast treated as daily wager of the management as engaged as engagement of contract labour has been prohibited by the Government w.e.f. 21-07-2002.

It was further submitted that CPWD is not making payment to the workmen equal wages in time scale with all the allowances as made to the regular employees. The daily rated workers in the category of Wireman & Khalasi have been getting their wages in time scale plus (+) DA, ADA, HRA, CCA, IR except increment. These workers are also entitled to the wages fixed in time scale from the date of their initial employment being skilled workmen.

It was submitted from the side of the management that the workmen have been engaged by the contractor and they are working under the control and supervision of the contractor. It cannot be said that their services are integrated with the management. CPWD has been assigned maintenance of Andaman & Nicobar Bhawan and the CPWD has engaged private agency for performing the work in public interest and the claimants have been engaged by such private agency and are being paid by such agency. They are being controlled and supervised by the agencies under whom they work.

It was further submitted that the workmen at Sl. No. 1 to 3, Shri Laljeet Yadav, Wireman, Shri Satish Kumar, Wireman and Shri Ajay Kumar, Khalasi were engaged by M/s. Naini Electricals in the premises of A & N Guest House. The workmen at Sl. No. 4 & 6, Shri Omkar Singh, Wireman and Shri Ram Ganesh, Khalasi are the employees of M/s. M. S. Rawat, UK Enterprises and these workmen have been engaged at Bihar Niwas and the workman Shri Yogender Singh was deputed for work at AARDO Building under the control of SD-II/ED Vth. CPWD has awarded specified work of maintenance and operation of electricals to the aforesaid contractors and the said contractors are performing the awarded job in terms of the contract and the applicants are working for the said contractors. The workmen have been employed against the deposit work for which regular staff is not required to be posted as this is not perennial nature of work for CPWD and it can be discontinued by any time by the concerned government.

Contract has been awarded for specific job and not for employment.

The workmen have filed photocopies of Log Book. In the log book complaints have been registered and repairs have been done by these workmen. It is admitted that it has been signed by the Jr. Engineer, CPWD.

It was submitted by the management that by mere signing of the log book it cannot be presumed that the workmen worked under the control and supervision of the management. The complaints made are registered and the workmen are given to repair the lines where complaint has been made. There is no proof that the management assigned the job to the workmen. The workmen were sent by the contractors. They received the complaints and they acted accordingly. The workmen did not work in the premises of the management as A & N Bhawan/Guest House and Bihar Niwas are not the premises owned by the CPWD. Only the specific work of maintenance has been assigned to the CPWD and CPWD has engaged contractors for the specific job.

The workman Shri Laljeet Yadav has admitted that he got his salary from the contractor throughout. He has further admitted that he was assigned work by Shri Sachdeva, Contractor and he worked in A & N Bhawan, Chanakyapuri, New Delhi. He has further admitted that he has also worked for Sachdeva at Janpat Bhawan other multistoreyed building where Sh. Sachdeva was contractor in the year 1994—1997. This workman has further admitted that Rajeev—Sanjeev Electrical got the contract for wiring etc. in A & N Bhawan. He has further admitted that he works sometimes at A & N Bhawan, sometimes in some other unit where he was sent by the contractor from time to time. He has further admitted that he did not know for which sub-division of CPWD he had worked. He has further admitted that he had made request to M/s. Naini Electricals that he may send him at any place for work. The workman has further admitted that he was prepared if the contractor asked him to leave his job. The management has awarded the contract to the contractor for maintenance and operation of electrical services in A & N Bhawan/ Guest House.

Sh. Lajeet Yadav has also admitted that A & N Bhawan/Guest House is owned by the government of A & N. The Government awards the contract to CPWD for maintenance and CPWD gives it to the contractors.

The workman Shri Omkar Singh has also admitted that he never applied for service with the management and all the workmen were getting their salary from the contractor. The terms of salary etc. were settled by the contractor.

From perusal of the cross-examination of these two workmen namely Shri Laljeet Yadav and Shri Omkar Singh it stands established that the workmen worked under the control and supervision of the contractor and used to get their salaries through contractor under whom they worked. The workmen acted according to the contractor and not according to the management.

These workmen have also admitted that the CPWD has been assigned the work of maintenance of different units just as Bihar Niwas and A & N Bhawan/Guest House by the concerned government and the CPWD awards the same job to some contractor and the contractors engages the workmen for his own job i.e. maintenance of A & N Bhawan/Guest House, Bihar Niwas etc. So it cannot be said that the management engaged the workmen for its own work.

It was submitted from the side of the management that in view of Uma Devi 2006 SCC (L&S) 753 no question

of regularization arises. The Hon'ble Supreme Court in the same case has also emphasized that the Courts/Tribunals in their sympathy for the handful ad hoc/casual employees before it cannot ignore the claims for equal opportunity for the teening millions of the country who are also seeking employment. In such case, the Courts/Tribunals should adhere to the constitutional norms and should not water down constitutional requirement in any way.

It has been held in 2006 SCC (L&S) 753. "one aspect needs to be clarified. There may be cases where irregular appointment (not illegal appointments) as explained in S. V. Narayanappa, R.N. Nanjudappa and B. N. Nagarajan and referred to in para 15 above of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention.

It was submitted from the side of the management that it is admitted that the workmen have been continued under the orders of the Hon'ble High Court of Delhi. The workman initially invoked the writ jurisdiction and the Hon'ble High Court ordered that the workman will be continued in case the contractors are changed.

It is obvious that the management continued these workmen under the directions of the Hon'ble Delhi High Court.

It was submitted from the side of the workmen that in Steel Authority of India's case the Hon'ble Apex Court directed the industrial adjudicator to regularize the services of the workmen if the contract is found sham and not genuine. This case law has not been distinguished in Uma Devi's case.

It was submitted from the side of the workmen that it is admitted to the management that the government has abolished the contract labour by notification dated 21-7-2002. The circumstances changed and there was no need to get the work done through the contractor. Contract Labour has been prohibited by the government. Contract Labour has been abolished, so there is no question of continuing the contract work by the CPWD. The continuation of the contract labour even after notification of prohibition of contract labour is illegal and arbitrary. The engagement of contractors became illegal atleast from 21-7-2002. The workmen have been continued. They have worked almost for 8 to 9 years. In the facts and circumstances of the case the workmen shall be treated as daily wagers atleast from 21-7-2002 and they are entitled to all the benefits of a daily wager.

There is no employer-employee relationship between the management and the workmen prior to 21-7-2002 as contract labour was not prohibited till then. After prohibition of contract labour the workmen became the daily wagers or ad hoc appointees of the management and there is employer-employee relationship after 21-7-2002.

The work assigned to the workmen is of sufficient duration and is perennial in nature. The workmen have been discharging these duties for 8 to 9 years so it is a work of sufficient duration. Such work cannot be performed by engaging contractors.

It is true that in Uma Devi's case the case of Steel Authority of India has neither been distinguished nor approved by the Constitution Bench. The workmen have not established that they worked under the complete control and supervision of the management. They have received their payments from the contractors. They have admitted that they were engaged by the contractors and they worked under their direction. So the case of Steel Authority of India is not applicable in the instant case. The workmen have been continued under the direction of the Hon'ble Delhi High Court. So they are not entitled to regularization. The management has continued them after 21-7-2002 after prohibition of contract labour. In such circumstances the workmen have become daily wagers of the management and they are entitled to all the benefits of a daily wager after 21-7-2002.

This issue is decided accordingly.

ISSUE NO. 2:

It was submitted from the side of the workmen that in view of Surinder Singh's case the workmen are entitled to Equal Pay for Equal Work from the initial date of their engagement.

In the instant case the workmen were initially engaged through contractor and they have been paid minimum wages by the contractor or the management, so the principles laid down in Surinder Singh's case of the Hon'ble Apex Court is not applicable in this case. The workmen were initially engaged as contract labour and payment to them has been made according to the provisions in this respect.

It has been held in 1998 II LLJ 633 by the Hon'ble Apex Court as under :

> " 'Equal Pay for Equal Work' principle—If there is clear-cut difference in recruitment qualifications, regarding experience as well as educational qualification, between two sets of employees, there cannot be automatic linkage and parity of treatment for retrospective revision of pay scales—To grant relief in such circumstances would result in reverse discrimination in favour of claimants to relief."

The workmen were initially engaged by the contractor without considering their educational qualification etc. So they cannot be placed at par with regularly selected workmen.

It has been held in (2003) 6 SC 123 as under :—

" 'The principle of 'equal pay for equal work' is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. It is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

From perusal of this judgment of the Hon'ble Apex Court, it becomes quite obvious that after establishing complete and wholesale identity, identical pay scales can be decided. The workmen were engaged as contract workers initially, so they cannot be placed at par with the employees appointed on a regular basis. They have been paid wages as per the provisions existing at present.

It has been held in AIR 1986 SC 584 as under :—

"Surinder Singh and another Petitioners Vs. The Engineer in Chief CPWD and other Respondents—Constitution of India, Art. 39—"Equal Pay for Equal Work"—Doctrine of, is required to be applied to persons employed on a daily wage basis—they are entitled to same wages as are paid to similarly employed employees."

The workmen were not daily wagers and they were not performing duties as regular employees. They were initially engaged as contract labours. They are not entitled to "Equal Pay for Equal Work".

This issue is decided accordingly.

ISSUE NO. 3 :

From perusal of the findings of issue No. 1 & 2 it becomes quite obvious that the workmen are not entitled to regularization and equal pay for equal work. It has been held in issue No. 1 that they shall be deemed to be daily wagers of the management after 21-07-2002 after prohibition of contract labour. Engagement of contact labour is illegal in view of prohibition of contract labour. The workmen have become the daily wagers of the management in view of the illegal contract and they are entitled to get all the benefits of daily wagers as per the provisions of labour laws specifically Sec. 25F, G & H.

The reference is replied thus :

The demand of the CPWD Mazdoor Union for equal wages for equal work and regularization of the services of contract labourers, namely S/Shri Laljeet Yadav, Wireman, Satish Kumar, Wireman, Ajai Kumar, Khalasi, Omkar Singh, Wireman, Yogender, Wireman & Ram Ganesh, Khalasi in Electrical Divisions 4 & 14 of the Central Public Works Department, New Delhi is neither legal nor justified. The workmen are entitled to be treated as daily wagers of the management after 21-07-2002 and are entitled to all the benefits of daily wagers.

The award is given accordingly.

Date : 19-09-2007 R. N. RAI, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3096.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या-82/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/228/2005-आई आर (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3096.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of CPWD, and their workmen, received by the Central Government on 27-9-2007.

[No. L-42012/228/2005-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Shri R.N. Rai, Presiding Officer

I. D. No. 82/2006

IN THE MATTER OF :

Shri Saudagar,
C/o. All India CPWD (MRM) Karamchari Sangathan,
4823, Balbir Nagar Extension,
Gali No. 13, Sahadara,
Delhi-110032.

Versus

The Executive Engineer,
(Pushp Vihar Maint. Divn.),
Pushpa Bhawan,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-42012/228/2005-IR (CM-II) Central Government dt. 5-10-2006 has referred the following point for adjudication.

The point runs as hereunder :

"Whether the demand of the union for regularization of services of Shri Saudagar, Mason w.e.f. 1-8-1983 and payment of consequential financial benefits is legal and justified ? If yes, to what relief the workman is entitled and from which date."

It transpires from perusal of the order sheet that the workman was sent notice on 7-11-2006 for filing claim on 15-1-2007. He has not filed claim statement on 5-1-2007, 12-2-2007, 13-3-2007, 13-4-2007, 8-5-2007, 23-7-2007 and 3-9-2007. The claimant has failed to file claim statement after sufficient opportunity being given to him.

No dispute award is given.

Date : 13-9-2007

R.N. RAI, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3097.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यूक्लियर पॉवर कार्पोरेशन ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या-7/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/4/2004-आई आर (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3097.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Nuclear Power Corporation of India Limited and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/4/2004-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Shrikant Shukla, Presiding Officer

I. D. No. 7/2005

Ref. No. L-42012/4/2004-IR (CM-II) Dt. 17-1-05

BETWEEN

Sri Rajesh Vishwakarma,
S/o Sh. Hari Shankar Vishwakarma,
H. No. N-275, Shiwalik Nagar,
BHEL, Ranipur,
Hardwar (Uttranchal)

AND

1. The Deputy Chief Engineer,
   Nuclear Power Corporation of India Ltd.,
   Administrative Bhawan No. 3, C/o B.H.E.L.,
   Ranipur,
   Hardwar (Uttranchal)
2. The Chairman-cum-Managing Director,
   Nuclear Power Corporation of India Ltd.
   Head Office, Vikram Sarabhai Bhawan,
   Mumbai-400094.

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following dispute vide No. L-42012/4/2004-IR (CM-II) dated 17-1-05 for adjudication to the Presiding Officer, CGIT-cum-Labour Court, Lucknow :

"Whether the Action of Management of Nuclear Power Corporation of India Limited in terminating the services of Sri Rajesh Vishwakarma S/o Hari Shankar Vishwakarma, Typing/Clerk w.e.f. 21-7-03 is legal and justified ? If not to what relief he is entitled to ?"

The case of the worker Sri Rajesh Vishwakarma is that he was engaged on the post of Typist/Clerk by the Dy. Chief Engineer Sri R. K. Jain in the office of Nuclear Power Corporation of India Ltd., Hardwar (Uttranchal) on 6-2-97 and continuously, worked upto oral termination i.e. 21-7-03. The management of the corporation provided the facilities including wages, but did not regularize his services and the engagement was treated temporary. The work pertained to campus of B.H.E.L., Hardwar and Sri Jain authorised/permitted issue of gate pass to the workman from BHEL Administration. Workman always attended his duty and signed the attendance register. Worker has alleged that he received goods, material equipment on behalf of Nuclear Power Corporation of India Ltd., and despatched all official document. Worker purchased computer parts for repairing on behalf of Nuclear Power Corporation of India Ltd. Bills and voucher duly signed by the workman were approved from time to time. Worker has also alleged that he was terminated without notice, notice pay or compensation in violation of section 25F of Industrial Disputes Act, 1947, although he completed 240 days work in every calender year. Though the worker

was engaged on daily wages of Rs. 40 per day which was later increased to Rs. 110 per day, but he was getting the same on monthly basis. Workman has stated that he approached to the employer and gave representation by registered post dt. 31-7-03 which was refused by the opposite party no. 2. Workman is therefore entitled to reinstatement with full back wages and other consequential benefits. Worker has accordingly prayed for reinstatement with full back wages and consequential benefits.

Worker has filed following photocopies of documents with list paper no. C-8.

1. Worker's representation dt. 31-7-03.
2. Letter of Dy. Manager (P and R) addresed to Sri J. K. Jain, Head QA Office NPCIL, Hardwar dt. 23-5-03.
3. Application of the worker dt. 7-3-2003 addressed to CMD, NDCIL and Director (Personnel), Mumbai with bio data.
4. Letter of Addl. GM, BHEL, Hardwar to incharge (gate pass) CISF, BHEL, Hardwar for 20-1-03 to 20-4-03 for 800 to 1700 Hrs.
5. Letter of Sr. Executive Engineer, NPCL, Hardwar requesting issue of gate pass from 8-10-02 to 12-10-02 addressed to Asstt. Commondent, CISF, BHEL, Hardwar.
6. Gate Pass.
7. Visitor entry passes.
8. Application of issue of provisional Identity Card and Provisional Identity Cards dt. 3-9-01, 1-6-2000.
9. Temp. permission for various period as customer in the name of workman.
10. Application of the worker for renewal of gate pass stating himself on typist on contract basis dated 10-10-02, 8-1-02.
11. Request for issue of gate pass.
12. Attendance Sheets.
13. Paying slip, material gate pass.
14. Extract of despatch register.
15. Misc. documents.

Dy. General Manager, Narora Atomic Power.Station has filed the written statement on behalf of opposite parties. It is submitted that NPCIL opposite party has a small office in BHEL premises in Hardwar where only 3 engineers are posted from the Head quarters and their main duties are to coordinate the work related to Quality Assurance of items indented at BHEL, Hardwar. Whenever there is any requirement of assistance of any Typing etc. these engineers in their individual discretion are free to get the work done from outside/open market on assignment payment basis. Initially the opposite party engineers at Hardwar had an arrangement with one Mr. Ajay Singhal to collect and deliver the typing work of the office of Hardwar. Sri Rajesh Vishwakarma was deputed on behalf of Mr. Ajay Singhal, the contracting Agency for collection and delivery of typing material. Under this circumstances Mr. Ajay Singhal or Sri Rajesh Vishwakarma used to raise bills on the opposite party or used to discharge receipt vouchers in favour of the opposite party in token of amounts/payments received. The arrangement as above was in vogue roughly from Feb. 97 till middle of the year 2000. Thereafter Sri Rajesh Vishwakarma came forward and offered for taking up typing work on chargeable basis i.e. per page and himself offered to come office of opposite party for collecting and delivering the typing work. Under this arrangement Sri Rajesh Vishwakarma took the job contract himself directly. Sri Vishwakarma was taking the typing documents from the QS of the Hardwar and after completing/typing the same outside the office, he returned the same to QS office alongwith a bill duly signed for payment. Since QS office of NPCIL is located in BHEL premises, Hardwar. Sri Vishwakarma was required to possess an entry pass to enter BHEL premises. As per security procedure of BHEL, no one is allowed without any authorization pass/identity to enter into the BHEL premises. Accordingly he was issued provisional identity card by BHEL as issued to the visitors, which was reviewed and extended from time to time. The entry pass enable Sri Vishwakarma to enter office premises at frequent intervals for collecting the documents and again handing over back the same to the QS engineers. The entry permit was issued by BHEL on the request of NPCIL. Issuing an entry permit does not mean that Sri Vishwakarma was an employee of the opposite party and this did not create any employer employee relationship between the opposite party and the Sri Vishwakarma. Hence used to take job work from the office of the opposite party and used to get it typed from/at a private typing Institute and used to charge on the basis of number of pages typed by issuing a signed bill for/on behalf of said typing institute. Thus, Sri Vishwakarma was never in the employment of NPCIL opposite party and he does not come within the definition of the term workman. Under this arrangement Sri Vishwakarma charged typing charges at the rate of Rs. 4 per page. The opposite party has specifically denied the appointment of Sri Vishwakarma as typing/clerk. It is further submitted that it is false that Dy. Chief Engineer engaged him on the post of typist/clerk. As a matter of fact the NPCIL opposite party had no jurisdiction to terminate the services of Sri Vishwakarma in absence of employer-employee relationship. On alleged date of termination i.e. 21-7-03 no cause of action and no Industrial Dispute worth its name arose or existed. The allegation of Sri Vishwakarma that he was engaged and paid wages is stated to be false by the opposite party.

"The contents of para 13 of applicant's statment of claim are not admitted. It is also very relevant to highlight that the opposite party is a Registered Establishment under section 7 of Contract Labour (Regulation & Abolition) Act. Various jobs of casual, sporadic and intermittent nature have and can be given on contract basis. In view of the registration, the opposite party is permitted to engage a "Contractor" as prescribed under Section 2 (c) of Contract Labour (Regulation & Abolition) Act. In line with these provisions, opposite party is engaging contractors by awarding works of different nature, which were/are undertaken by the contractors though contract labourers or sub-contractor. Applicant was one of such contract labour engaged by a contractor Sri Ajay Singhal in the initial period. Hence, there was no direct relationship of employer-employee between opposite party and the applicant and therefore, the provisions of 2(k) of Industrial Disputes Act, 1947 do not even apply in this case.

Opposite party has filed the photocopies of documents with list C.19. The documents are as follows :

1. Photocopy of covering letter bearing No. 8-ALC-II/38(4) R dt. 2 April, 98 of ALC(C) Bombay alongwith the photocopy of Registration No. B-ALC/11/35(4)-R dt. 2-4-98.
2. Photocopy of letter dt. 12/14-7-95 of Sri JK Jain recommending for issuing a formal contract to Mr. Ajay Singhal.
3. Photocopy of letter dt. 18-1-96 of Sri JK Jain addressed to Sri Ajay Singhal regarding awarding of contract.
4. Photocopy of contractor's bill dt. 7-3-97.
5. Photocopy of receipt voucher dt. 7-3-97 signed by Sri Rajesh Vishwakarma on behalf of contractor Ajay Singhal.
6. Photocopy of contractor Ajay Singhal's bill dt. 7-2-98.
7. Photocopy of receipt voucher dt. 7-2-98 signed by Rajesh Vishwakarma on behalf of contractor Ajay Singhal.
8. Photocopy of contractor's bill of Ajay Singhal dated 7-3-98.
9. Photocopy receipt voucher dt. 7-3-98 signed by Rajesh Vishwakarma for and on behalf of Ajay Singhal.
10. Photocopy of request letter dt. 30-5-2000 of Rajesh Vishwakarma for taking up typing work on chargeable basis.
11. Photocopy of application dt. 30-5-2000 of Rajesh Vishwakarma for issuing of provisional identity card.
12. Photocopy of letter dt. 30-5-2000 of Sri JK Jain bearing subject of gate pass from 5-6-2000 to 31-3-01.
13. Photocopy of application for issue of contractor's gate pass.
14. Photocopy of provisional identity card (front side and back side) bearing date of issue 8-7-2002.
15. Photocopy of noting of JK Jain dt. 8-1-03 for issue of gate pass.
16. Photocopy of application dt. 18-1-03 of Rajesh Vishwakarma requesting for typing work chargeable on per page basis and for issue of identity card.
17. Photocopy of letter dt. 18-1-03 of BHEL bearing subject gate pass to Sri Rajesh Vishwakarma.
18. Photocopy of aplication dt. 8-1-03 for issue of contractor's gate pass.
19. Photocopy of application dt. 16-4-03 of Rajesh Vishwakarma requesting for taking typing and delivering typing material/papers.
20. Photocopy of application dt. 19-7-03 of Rajesh Viswakarma for taking and delivering typing material/papers.
21. Photocopy of bills/cash memo signed by Rajesh Vishwakarma as well as receipted by Sri Rajesh in token of having receipt of payments covering the period from 6-5-2000 to 30-6-2000 the total no. of papers are 79.

Worker has examined himself. Opposite party has examined Sri JK Jain. Add. Chief Engineer of NPCIL.

Parties have filed the written arguments.

Opposites party has filed the photostat copies of bills-cum-receipt for typing papers No. C-40 to C-119. These bills are over two hundred. Worker Sri Vishwakarma has admitted the signatures on the said bills. The bills are under the signature of Sri Rajesh Vishwakarma and has signed acknowledging the payment thereof. Bills have been raised by typing at the rate of Rs. 4 per page. When Sri Rajesh Vishwakarma was confronted with the said document in cross-examination the worker stated "कागजात C-40 से लेकर C-119 मेरे द्वारा NPCIL को दिये गए थे। इन सभी पर मेरे हस्ताक्षर तथा मेरी हस्तलिपि है।"

The said bill-cum-receipt are right from 6-5-2000 to 30-6-2000. These are regular bills-cum-receipt belonging to

each and every month, during the said period. This is the evidence, which shows that Sri Vishwakarma charged the typing charge at the rate of Rs. 4 per page and the name of student typing and shorthand Institute was used for raising the bill.

There are some more documents filed by the opposite party on such document is C-29 the signature on which is admitted to Sri Vishwakarma. Letter is dt. 30-5-2000 in which Sri Rajesh Vishwakarma has offered himself for typing work on chargeable basis is paper page. Through this letter Sri Vishwakarma has to allow him to come to his office for collecting and delivering the documents when confronted with this document Sri Vishwakarma has stated on the corss examination that "C-29 पर मुझसे जबरदस्ती हस्ताक्षर जे.के. जैन ने कराये।" Later on in the cross-examination he has stated, "मुझे याद नहीं कि मैने 30-5-2000 को कोई पत्र NPCIL को दिया था।" " C-29 मैने किया था यह जे.के. जैन के शब्द हैं। मेरे नहीं हैं मैंने दबाव में आकर हस्ताक्षर किये थे। अप्लीकेशन में क्या लिखा था इसकी मुझे जानकारी थी।"

Worker has not mentioned a single work against Sri J.K. Jain that he got the letter C-29 typed and got it signed forcibly, although he was aware of the contents. Even in cross-examination not a single question was asked about obtaining signature forcibly.

Meaning thereby the Rajesh Vishwakarma be knowingly fully well the contents signed on the original of C-29 and delivered it to Sri J.K. Jain.

Opposite party has filed another document i.e. C-35 letter of Sri Vishwakarma the contents of which are produced below :

सेवा में,

श्रीमान जे.के. जैन
मैसर्स एन.पी.सी. आफ इण्डिया लिमिटेड
बी.एच.ई.एल. रानीपुर
हरिद्वार

विषय : टाइपिंग से सम्बन्धित कार्य के लिये प्रार्थनापत्र

महोदय,

निवेदन है कि मैं NPCIL के स्थानीय कार्यालय में 20 जनवरी, 2003 से 20-4-2003 तक टाइपिंग कार्य प्रतिकापी के आधार पर करना चाहता हूँ। टाइपिंग का कार्य प्राप्त करने एवं टाइपिंग उपरान्त वापिस करने हेतु मुझे अन्दर जाने के लिए पहचानपत्र प्रदान करने की कृपा करें। मेरी शैक्षिक योग्यता B.A. पास है और प्रतिलिपि संलग्न है।

प्रार्थी

Sd/-

राजेश विश्वकर्मा

दिनांक 18-1-2003

Sri Vishwakarma was confronted to the said document in cross-examination. Sri Vishwakarma stated "मेरेद्वारा NPCIL को दिया गया था। NPCIL में लाकर तथा टाइपिंग का कार्य ले जाकर करता था।"

On the existence of above facts it is evident that the worker offered himself for job work of typing on agreed rate from a private shorthand and typing institute during 6-5-2000 to 30-6-2000. How and why he submitted the bill and received the amount therein has not been explained by Sri Vishwakarma. These documentary evidence go to the root of the case.

Now, the oral evidence of parties are perused by me. Sri Vishwakarma has stated in his examination in chief that he was appointed on 6-2-97 by Dy. Chief Engineer on the post of Typist clerk.

The question is if at all there is any post of Typist clerk in the office of NPCIL. Hardwar. Sri J. K. Jain has stated on oath that he is Addl. Chief Engineer. There is a small office of NPCIL in Hardwar which is situated in the premises of the BHEL. The office is to inspect the quality of goods, which are purchased by NPCIL. There is no clerical work in this office. Meaning thereby that there exists no post of typist clerk.

Worker Sri Vishwakarma has admitted that it is the Personal Deptt. (Karmik Vibhag) which recruits the employees. He has also admitted that Karmik Vibhag has never appointed him. He has also admitted that the educational qualification of different vacancies and the vacancies are notified, but no notice was published when he was engaged nor there was any interview and selection. He stated that approached Sri J. K. Jain, has appointed him on daily wage, but Sri Jain who has been examined by opposite party does not corroborate the story. NPCIL is not a private industry or a firm run by a propriter. It is very important and senstive industry of Govt. of India and such appointments/engagements are strictly prohibited.

Now-a-days industries are resorting to out sourcing the job on contract, to achive the target (goal) with minimum expense to economise the expenditure in the interest of State. Everyone is aware that where there is no full time job for a typist/clerk, why one should go for employing typist clerk ? From the evidence on record the fact is that NPCIL is a valued customer for BHEL again a government industry) and it has provided a small accommodation for housing the small office of the NPCIL. Goal and objective is to inspect and ensure the quality of goods which NPCIL purchases. This task of quality assurance is that of qualified highly educated scientists and engineer. In the Defence Department of India Quality Assurance unit is managed not at production point, but separately and are such unit is located at Kanpur. In the present case the NPCIL is arranging the task at production point itself to check unnecessary transit expenses of the BHEL, as it the goods supplied inferior in quality and defective, the BHEL is to received back the goods and to incur heavy expenses. As

such there is hardly any need of clerk as the engineers have to themselves prepare the inspection report. Had there been any need of full time clerk the NPCIL, Personal Deptt. would have posted one at Hardwar. The witness Sri J.K. Jain Addl.Chief Engineer. He has stated." NPCIL का हरद्वार में छोटा आफिस में जो BHEL परिसर में स्थित है। NPCIL क्वालिटी सर्वलैन्स का कार्यालय है। जो सामग्री NPCIL क्रय करती है उसकी गुणवत्ता की जांच इस कार्यालय के माध्यम से होती है जिसमें तकनीकी अधिकारी के रूप में अकेला ही 1992 से कार्यरत हूँ अन्य तकनीकी पर नहीं है। मेरे कार्यालय में लिपिक का प्रावधान नहीं है।

मैं वादी श्री राजेश विश्वकर्मा को जानता हूँ। हम अपने कार्यालय के सम्बन्ध में रिपोर्ट भेजते रहते हैं उस रिपोर्ट की टाइपिंग के लिये संविदा के आधार पर कन्ट्रैक्टर श्री अजय सिंघल को इंगेज किया था। कार्य लेने के लिये (Document for type) के लिये। कभी अजय सिंघल खुद आते थे श्री राजेश विश्वकर्मा को भेजते थे। कभी किसी अन्य व्यक्ति को भेजते थे।

1997 को फरवरी मार्च से यह ठेका शुरू हुआ था। मार्च 2000 तक था। उसके बाद श्री राजेश विश्वकर्मा ने मुझसे कहा कि आप डायरेक्ट मुझे काम दो जिसे मैं टाइपिंग करके आप को दूँगा। तदन्तर आने जाने के उद्देश्य से इन्होंने प्रार्थना पत्र दिये थे जिनकी छाया प्रतियाँ कागज नं. 29, 35, 38 हैं। इनसे प्रति पृष्ठ हेतु 4 रुपया तय हुआ था। और जितना टाइप करते थे उसी के अनुसार भुगतान होता था। श्री विश्वकर्मा टाइपिंग का कार्य बाहर से करके लाते थे उन्हें भुगतान के बाद रसीद प्राप्त की जाती थी मैंने रसीदों की छाया प्रतियाँ दाखिल की हैं जो कि C-40 से C-119 तक हैं।

NPCIL व राजेश विश्वकर्मा के मध्य से आयोजक एवं कर्मचारी के सम्बन्ध नहीं थे। बल्कि सर्विस प्रोवाइडर व ग्राहक के संबंध थे। मैंने न तो बतौर कर्मचारी Engage किया और न मुझे किसी कर्मचारी को नियुक्त करने का अधिकार है। चूँकि बतौर कर्मचारी सेवा में नहीं थे अत: सेवा समाप्ति का प्रश्न नहीं उठता। श्री विश्वकर्मा ने कभी मेरे यहां कम्प्यूटर आपरेटर के रूप में काम नहीं किया। इन्हें कोई वेतन नहीं दिया गया और न ही वेतन देने का मुझे अधिकार है। मेरे यहां कोई अटेण्डेन्स रजिस्टर नहीं है मैं जब छुट्टी जाता हूँ तब मैं अपने नियंतक अधिकारी जो बम्बई में बैठते हैं उन्हें सूचित करता हूँ और जो कर्मचारी NPCIL से आते हैं उन्हें मैं सर्टीफाई कर देता हूँ। BHEL में हर व्यक्ति आ जा नहीं सकता क्योंकि प्रवेश निशिद्ध है सुरक्षा की दृष्टि से BHEL पास जारी करता है में ही संस्तुति करता हूँ। इन्हें मैंने कभी डाक प्राप्त करने या ले जाने के लिये अधिकृत नहीं किया। छोटा आफिस होने के कारण पत्रों को प्राप्त करने या उन्हें भेजने का कोई रजिस्टर मेरे कार्यालय में नहीं है। जो पत्र आते हैं उन्हें फाइल में लगा देते हैं जो पत्राचार करना होता है उसी फाइल में कर देता हूँ।"

C 21 व C 22 कंट्रेक्टर को कंट्रेक्ट देने के बाबत पत्राचार है। C 23 से C 28 तक के कागज राजेश विश्वकर्मा को भुगतान करने के संबंध में हैं।

C 29 देने के लिये कोई दबाव श्री विश्वकर्मा पर मेरे द्वारा नहीं डाला गया। इसकी मूल प्रति विश्वकर्मा ने खुद मुझे लाकर दी थी।

यह विश्वकर्मा ने स्वत: मुझे दिया था।

C 35 व C 38 भी श्री विश्वकर्मा ने स्वत: ही लाकर दिये थे। NPCIL में रिक्तियां भरने की एक निर्धारित प्रक्रिया है। जो NPCIL अपना है। इसके द्वारा रिक्तियां समाचार पत्र या रोजगार पत्र में समय-समय पर पात्रता निर्धारित करते हुये प्रकाशित होती हैं तथा निर्धारित प्रक्रिया के अनुसार आफर व नियुक्ति दी जाती है। जिसमें शर्तों का उल्लेख होता है उसमें चयनित व्यक्ति अपनी सहमति देता है तो सशर्त/मेडिकल व पुलिस वेरीफिकेशन जारी किया जाता है।

NPCIL की कोई इकाई हरिद्वार में नहीं है न ही कोई नियुक्ति अधिकारी बैठता है।

Following are the extract of statement in cross-examination of Shri Rajesh Vishwakarma.

"मैंने 6 फरवरी, 1997 से 21-7-03 तक काम टाइपिस्ट के पद पर किया था।

मुझे जे. के. जैन जो NPCIL में इंजीनियर थे ने नियुक्त किया था। मुझे कोई नियुक्ति पत्र नहीं मिला था। मुझे जे. के. जैन के अलावा किसी ने भी काम करने के लिये नहीं कहा। मुझे शुरू में 40 रु. प्रति दिन पारिश्रमिक मिलता था।"

"मुझे पारिश्रमिक की कोई रसीद नहीं दी जाती थी मैं अकेला ही डेलीवेजर का काम करता था।"

कागज नं. C 23 से C 28 गवाह को दिखाया गया। गवाह ने कहा कि ये ब्लैक पेपर थे जिस पर मुझसे साइन कराया गया। ब्लैक रसीदी टिकट पर साइन कराया था। अजय सिंघल को मैं नहीं जानता।

C 29 पर मुझसे जबरदस्ती हस्ताक्षर जे. के. जैन ने कराये। अजय सिंघल से मैं कभी नहीं मिला था न मैं उन्हें पहचानता हूँ।

NPCIL का दफ्तर BHEL प्रेमिसेस में है। ADM-3 बिल्डिंग में है।

NPCIL में जाने के लिये BHEL गेट पर पास की जरूरत होती है "C 29 मैंने दिया था। यह जे. के. जैन के शब्द हैं मेरे नहीं हैं। मैंने दबाव में आकर हस्ताक्षर किये।"

"कागजात C 35 मुझे दिखाया गया तथा यह पेपर मुझे दिया गया। मेरे द्वारा NPCIL को दिया गया। मैं NPCIL आकर तथा टाइपिंग को लेकर जाकर करता था। कागज नं. C 40 से लेकर C 119 मेरे द्वारा NPCIL को दिये गये। इन सभी पर मेरे हस्ताक्षर तथा हस्तलिपि है। 40 रु. रोज पर मेरा खर्च पूरा नहीं पड़ता था परन्तु इसके अलावा दूसरा काम नहीं करता था।"

"40 रु. पारिश्रमिक के अलावा मुझे कुछ नहीं मिलता था।"
"1993 में BA किया 2002 में M.A. किया।"

"मुझे नहीं मालूम कि NPCIL में क्लर्क टाइपिस्टों का नियुक्ति अधिकारी कौन है।

कार्मिक विभाग का नाम मैंने सुना है इसका काम है कर्मचारियों को नियुक्त करना।

कार्मिक विभाग ने मेरी नियुक्ति कभी नहीं की। न्यूक्लियर-पावर कारपोरेशन में बिना गेट पास कोई प्रवेश नहीं कर सकता।

NPCIL के लिये निर्धारित योग्यता एवं आयु होती है। रिक्तियां समाचार पत्र में प्रकाशित होती हैं। मैं जब रखा गया तो कोई रिक्ति प्रकाशित नहीं हुई थी।"

"यह कहना गलत है कि मैं प्रति पृष्ठ के हिसाब से पृष्ठ कागजों को टाइप करता था व पृष्ठ के हिसाब से पारिश्रमिक मिलता था।"

"यह भी कहना गलत है कि NPCIL से मेरा क्रमिक व सेवा योजक का कोई संबंध नहीं था।"

Admittedly there is no appointment order to prove that there was any contract of employment between the parties as an employer and employee. There is no post of typist/clerk under Sri J. K. Jain. Admittedly there is no notification and vacancy in the news papers or employment news, no selection committee, no selection etc.

There is no evidence to prove that Sri Vishwakarma was monthly paid daily wager, except that of Vishwakarma's own statement, which is not sufficient to prove the fact that he was a daily wage employee.

The photocopy of worker's own application dt. 8-10-02 is on the record filed by the worker (Sri Rajesh Vishwakarma himself) and admitted by the representative of the opposite party is relevant. In this document Sri Vishwakarma himself has requested the Commandant (Plants) CISF, M/s. BHEL are as under :

Sub : Entry of Sri Rajesh Vishwakarma working on contract in NPCIL office.

Dear Sir,

It is requested that Sri Rajesh Vishwakarma may please allowed to enter in the plant to work at our office from 8-10-02 to 12-10-02 as his entry pass (Ref. No. 651) has expired on 7-10-02. In this period he will complete all formalities to get his entry pass for another three months.

Thanking you,

Sd/-

Sr. Executive Engineer
Seal Nuclear Power Corpn.

The documents shows he was working on contract. It is a fact established that Sri Vishwakarma is a typist working on mutually agreed contract, therefore naturally he shall be known as typist, which is shown. One of the document i.e. photocopy of Provisional Card the status of visitor and mentioned as Typist in the column of the name and address "NPCIL on contract basis" is written.

So far as the extract of attendence register is concerned it is found that there are self made and bears no counter signature of Sri J. K. Jain. Learned representative of the opposite party has argued that, since Sri Rajesh Vishwakarma was authorised the office of the opposite party to collect typing material, taking undue advantage he steathly mis-utilised the stationary of BHEL and Seal of the office of Nuclear Power Corporation the original of which are in power and possession of Sri Vishwakarma. Not only this he also misutilised the stationary of Nuclear Power Corporation as well to create the evidence to support his case.

On behalf of worker it is agrued that Sri Vishwakarma has worked for more than 6 years and this proved by oral and documentary evidence produced by him, but the opposite party stated that the worker was contract labour of Ajay Singhal (Contractor) and subsequently engaged by opposit party for part time typing work, which is absolutely wrong and the signatures upon the management documents have been taken under coercion and due to need of employment and livelihood of the worker and family.

It is noteworthy say that the worker has alleged that he was a daily wager but there is not a single document to show that he was a daily wage typist. It is only when the opposite party filed more than 200 bills-cum-receipt of typing charges duly prepared by himself and signed. Sri Vishwakarma has come up with the false allegation. Such a person cannot be trusted on his oral evidence or on the strength of his documents. Document of opposite party i.e. C-21 relates back to 12-7-85 written by the Chief Engineer regarding quotation of 3 parties including Sri Ajay Singhal. Another document is C-22 dated 18-1-96 a letter addressed to Sri Ajai Singhal for supply of contract labour. C-23 is a document of payment in the name of Sri Ajai Singhal showing a payment of Rs. 1102 for 20 days job + Rs. 110.20 as service charge totalling Rs. 1212.20. It does not show the labour charges of Rs. 40 per day. During the period of contract with Ajai Singhal at C-24 is another such receipt of Sri Vishwakarma for payment of contract labour charge at the rate of Rs. 55 per day, paid for 20 days on 7-3-87. Such are other documents which are C-25, 26, 27 and 28. These documents produced by Sri Vishwakarma regarding material gate pass in the name of Sri Vishwakarma is of no help to him as they include Fly spike guard with extension code, personal computers etc. as these related to typing. In case Sri Vishwakarma took these out for replacement for his work it does not help him to say that he was an employee of the opposite party.

In the written argument there is mention of the fact that the worker submitted an application for summoning the documents which was rejected by the court. It is true that the application dated 17-11-2006 was filed requesting the summoning of attendance register/despatch register, about 8 months after the evidence was concluded, at a

stage when the case was fixed for arguments. Court found that the same was moved just to cause the delay in disposal of the case. None on behalf of the worker was present to press the application. Moreover the witness Sri JK Jain has specifically stated that there is no attendance register maintained in this office nor there is any despatch register.

The gate passes, Provisional Identity Card and Visitor's entry pass is of no help to the worker to prove that there was at any point of time relationship of employer and employee between the parties. It is observed that the BHEL (Bharat Heavy Electricals Ltd.) and Nuclear Power Corporation both are very much senstive instalation as BHEL offer for sale the machinery and equipments to Nuclear Power Corpn. Judicial notice could be taken that terrorist activities were and are in full swing. It is due to this faction the security has been entrusted to the CISF. It is not possible for any one to enter without the identity being established, may it be any one. It is due to this reason the Addl. General Manager, BHEL Hardwar has written the letter to Incharge, CISF. The copy of Letter is C-36. Even Sri Rajesh Vishwakarma has moved application in his own handwriting, the copy of which is paper No. C-38. The contents of the application is : "निवेदन है कि मैं M/s NPCIL, BHEL—Hardwar के स्थानीय कार्यालय में 21 अप्रैल 2003 से 20 जुलाई 2003 तक टाइप का काम करना चाहता हूँ और टाइप का कार्य करने एवं टाइपिंग उपरान्त वापस करने हेतु मुझे अन्दर व बाहर जाने के लिये पहचान-पत्र प्रदान करने की कृपा करें। मेरी शैक्षिक योग्यता B.A. पास है।" :

प्रार्थी
Sd/-

राजेश विश्वकर्मा
पुत्र श्री हरि शंकर

Sri Rajesh Vishwakarma has admitted the signatures and writing.

Had worker Sri Rajesh Vishwakarma been the employee he could have been got issued the identity card which are issued to the employees. There are other applications too.

On careful examination of entire evidence on record I come to the conclusion that the worker has cooked false story that he was daily wage employee on the rate of Rs. 40 per day which was subsequently enhanced. There is no employer and employee relationship between the parties. It is proved that Sri Vishwakarma on mutual agreement took up the job of typing atleast w.e.f. 6-5-2000 to 30-6-03 at the rate of Rs. 4 per page and has been regularly raising the bill and receiving the agreed amount. Prior to the said period he was paid for the services of typing tendered to opposite party at the contracted sum since the inception of the contract. In the circumstances when Sri Rajesh Vishwakarma was not at all employee of the opposite party there is hardly question of terminating the services by the opposite party. Issue is answered accordingly. Sri Rajesh Vishwakarma is not entitled to any relief.

Lucknow :
19-9-2007

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3098.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नवोदय विद्यालय समिति के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 814/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल 42012/117/92-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3098.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 814/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Navodaya Vidyalaya Samiti and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/117/92-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 814/2005

Registered on : 7-9-2005

Date of Order : 1-8-2007

Inderjeet Sareen, House No. 3364,
Sector-47-D, Chandigarh. ... Petitioner

Versus

Navodaya Vidayalaya Samiti (Regional Office)
Adult Education Building,
Sector-42A, Chandigarh. ... Respondent

APPEARANCE :

For the Workman : Shri R. S. Manhas, Advocate

For the Management : Shri D. R. Sharma, Advocate

AWARD

The following reference has been received from the Labour Ministry, Government of India vide their letter No. L-42012/117/92-IR (DU) dated 30th September, 1993 :

"Whether the action of Navodaya Vidyalaya Samiti Regional Office Sector 42-A, Chandigarh in not granting the pay scale of Rs. 1200-30-1560-EB-40-2040 to Mr. Inderjeet Sareen which he was drawing immediately before the date of his absorption in the Navodaya Vidyalaya Samiti is legal and justified ? If not, what relief he is entitled to and from what date ?"

"Whether the action of Navodaya Vidyalaya Samiti Regional Office Sector 42-A, Chandigarh in not protecting the pay of Shri Inderjeet Sareen in the scale of Rs. 1200-2040 plus deputation allowance from the date of his permanent absorption in the Samiti is legal and justified ? If not, what relief he is entitled to and from what date ?"

The parties were given notice of the reference who appeared through their counsel. The workman filed the Claim Statement and supported his pleadings with his own affidavit. The Management filed the written statement and supported the same with the affidavit of their witness Mukesh who was also brought in the witness box by the Management and was cross examined by the workman.

After going through the pleadings of the parties and the documents placed on record I find that the controversy between the parties is within a short compass. It is admitted case of the parties that the workman was employed with Haryana Agro Industries Corporation, Chandigarh before he joined service with the Management on deputation on 20th November, 1987, after having been relieved by his parent department on 19th November, 1987. What the Management has disputed is that the workman was working in the grade of 1200-2040 saying it was the matter between the workman and the Management. There is also no dispute that the Management had notified the demand for staff on deputation including the post of drivers and that the workman had applied for the post of driver for which he was selected and given the appointment letter. It is also admitted that the workman was taken on deputation by the Management for two years. What is further disputed by the Management is that the workman was taken on deputation in the pay scale of 1200-2040. The workman claims that the Management had given him option either to opt for the pay scale of the Management or for the grade he was getting in his parent department plus deputation allowance and that the workman had opted for the pay scale of his parent department plus the Deputation allowance. He has further claimed that he was never informed by the Management that the pay scale of driver with them was 950-1500; and that the workman had been getting the salary at the rate of 1440 and on joining the Management department Rs. 144 were added to that as deputation allowance which he received for two years two months. He was also allowed two increments at the rate of Rs. 30 per month raising his basic pay to 1500 but thereafter his annual increments were stopped suddenly and were not released despite his repeated requests; and that the workman had been paid increments at the rate of Rs. 30 per month twice although the increment at that rate was not in the grade on 950-1500. To this claim of the workman the Management has stated that the workman was duly informed about the pay scale of a driver with the Management and even mention to that effect was made in the appointment letter of the workman which he had accepted and complied with without any reservation. He, however, was wrongly paid wages at the rate of 1,584 and when the mistake was detected the same was rectified. According to them the driver with the Management could not be paid basic pay more than 1500 being maximum of the grade and whatever more was paid to the workman was paid due to inadvertence.

The Management has denied that the workman had opted for pay scale of his parent corporation plus deputation allowance, but they admitted that the period of deputation was extended for one year. The workman claimed that the Management had proposed to the workman to absorb him permanently in their organization against the post of driver w.e.f. 19th November, 1989 without mentioning about the grade of the post on which they wanted to absorb him. They sought his consent and technical resignation for transmitting the same to his parent department. They, however, never notified the workman the pay scale of the post nor gave him the copy of rules containing the mention about the grade. In fact his signatures were obtained on the consent and resignation letters on 24th Nov., 1989 without informing him about the pay scale of the post of driver with the Management nor he knew about it at the time of tendering the resignation and his absorption in the Management. To this the Management has replied that the workman voluntarily with full knowledge of the rules had opted for the post of driver with the Management on permanent basis and had tendered his resignation in his parent department. The workman having been absorbed permanently with the Management was governed by their rules and regulations according to which a driver with the Management could not get more than 1500 as basic pay, thereore, the workman could not be given higher grade than provided by the rules.

The workman has further claimed that at the time of his joining service with the Management on deputation he was working in the grade of 1200-2040 and was drawing Rs. 1500 as his basic salary, but the Management did not protect his pay when they permanently absorbed him with them by which time he had already earned two annual increments. They had, however, stopped his future

increments without any justification. He has, therefore, claimed that the Management having denied him the pay scale of 1200—2040 has put him to a great loss and embarrassment. Since he was already working in that grade, therefore, he was legally entitled to get the same. He has further claimed that the Managmeent did not consider his representation made to remedy the injustice done to him. He was also not allowed to withdraw his resignation. It is further his claim that as per deputaion (Duties allowance rules 9.5.1 F.R.S.R.) any person on deputation was supposed to draw higher pay and in case it is not given the deputaionist is required to be sent back to his parent department within 6 months. But in this case the Management absorbed him finally but they did not protect his salary although they had paid him the same for two years and two months. Admitting that the workman had been paid his salary at the rate of 1500 per month plus a stagnation increase of Rs. 25 it is stated by him that the Management has protected the salary of other deputationist with them but has denied the same to the workman.

In reply to this assertion of the workman, the Management has submitted that since the pay scale of a driver with the Management was 950-1500 therefore neither the workman could claim higher scale nor the Management could give him the same. The workman had the option not to accept the offer and could go back to his parent department but it was not done by him, therefore, he was governed by the pay scale rules of the Management and could not claim special treatment. They have denied that the FRSR rules were applicable to the case of the workman. According to them those rules pertained to the period prior to his permanent absorption. The workman had voluntarily sought the absorption. The workman having voluntarily accepted the appointment, made himself a subject to those rules. Now he cannot retract from that. The Management has already allowed the workman to draw Rs. 1500 as basic pay, the claim of the workman, therefore, is without any merit and it should be dismissed.

The perusal of the record shows that on 1st October, 1987 the Management issued a letter to the Chief Secretaries of States of Punjab, Haryana, J&K, H.P. and UT of Chandigarh and Delhi by which they notified the post available with the Management offering to accept persons on deputation. The letter contains the nomenclature of pay scales and eligibility criteria. Fifth category of post was "having five years experience as driver". The letter further reads that the deputation could be extended but not beyond three years. However, the selected person could be absorbed in the department permanently. The letter further reads that the selected persons shall draw the salary in accordance with the order of the Finance Ministry issued on 4th May, 1961 as amended from time to time. Giving the features of the Management Samiti it further said that the pay scale shall be governed under rules of the Samiti and there will be no relaxation in that regard. There is a copy of the application of the workman made by him to his MD requesting to forward his application for appointment on deputaion with the Management. The next letter show that an interview letter was given to the workman on 10th October, 1987. There is also letter dated 13th Nov., 1987 by which the workman was appointed in the grade of 950-20-1150-EB-25-1150. There is nothing mentioned in this letter that the workman was allowed any higher scale or protection of his salary as is claimed by him. There is also copy of the order issued by Haryana Agro Industries Corporation dated 16th Nov., 1977 by which the workman was relieved and directed to join his duties with the Management. The corporation asked for the terms and conditions of the deputation from the Management. There is also a copy of the joining report by which the workman submitted his joining report to the Deputy Director of the Management in compliance to the order of the Management number NPSEECH-RECT dated 30th November and relieving order of the Haryana Industrial Development Coop. dated 19th Nov., 1987. There is a copy of the application of the workman on record by which he opted to draw his salary of his parent department plus deputation allowance. There is a letter dated 30th October, 1989 on record by which the deputation of the workman was sought to be extended and the same was allowed by the Haryana Agro Industries Corporation. On record I also find a memo dated 21st Nov., 1989 which was served upon the workman and by which he was told to be proposed to be absorbed permanently by the Management on the post of driver further telling him that his services will be governed by the absorption rules adopted by the JNV Samitis vide letter dated 8th Nov., 1989. He was asked to intimate immediately, latest by 5th Nov., 1989, about his willigness with the condition that if he accepted the proposal he will have to tender his resignation w.e.f. 19th Nov., 1989 from the post he was holding in his parent department. There is also copy of the order of Haryana Agro Industries Corporation dated 12th Dec., 1989 which reads that the resignation of the workman was accepted w.e.f. 19th Nov., 1989. There are copes of a number of representations made by the workman for grant of higher grade and a letter dated 17th June, 1998 which shows that the requests of the workman were turned out.

From the docments brought on record it is clear that the workman had joined service with the Management on deputation in compliance to the order No. NVS-CH-RACT-87/266/27 dated 13th Nov., 1987. This order clearly states the grade in which the workman was appointed as driver on deputation i.e. in the grade of 950-20-1150-EB-25-1500. By the same order he was entitled to draw dearness and other allowances as permissible in terms of instructions of the Ministry of Finance contained in O.M.No. 10(24)-E.3rd/60 dated 4th May, 1961 as amended from time to time. He was also shown to be entitled to the deputation duty allowance as per the instructions issued by the department

of Personnel and Training No. O.M.No. 6/30/86-Estt. (Pay II) dated 9th Dec., 1986 and O.M. No. 1/4/84-Estt. Pay II dated 26th Dec., 1984. The workman reported for duty in compliance to the said order and the relieving order, issued by his parent department on 20th Nov., 1987, which clearly shows that the workman knew as to what were the terms and conditions of his appointment with the Management and what was the grade in which he had been adjusted on deputation.

There is on record memo dated 1st Nov., 1989, by which a proposal for absorption of the workman with the Management on permanent basis was mooted. The workman was asked to give his option and in case he is willing to be absorbed he was directed to tender his resignation w.e.f. 19th Nov., 1989. There is an order dated 12th Dec., 1989 on record issued by the Managing Director, Haryana Agro Industries Corporation, Chandigarh, a copy of which was also given to the workman. According to this order the workman submitted his resignation vide his application dated 24th Nov., 1989 and the same was accepted with effect from 19th Nov., 1989. This further shows that the workman accepted the proposal given by the Management and that is why he resigned from his parent department and joined the service with the Management. I find no merit in his claim that he had given option for deputation on the ground that his pay will be protected which he was drawing in his parent department. He has produced no proof to this effect. However, I find weight in his submission that the Management had not notified the grade of the driver in their notification dated 1st October, 1987, the photocopy of which notification is on record. A reading of the notification shows that post of driver was thought of later on and may be it was manipulated afterwards as column no. 5 showing the availability of post of drivers with eligibility criteria of five years experience as driver in hand after the post of Gestetner Operator at a place where there was no space for it. The entry of notice regarding the post of drivers should have been below the detail of post of Gestetner Operator and before para 2 of the said letter. There is another reason to have this view as the scale of the pay of driver was shown as was that of Gestetner Operator i.e. 950-1400 whereas the claim of the Management is that the grade of driver was of 950-1500. The Management seems to have hurriedly manipulated the entry of driver and with equal hurry showed the pay scale of the driver as that of the Gestetner Operator by showing ditto to the pay scale of the Gestetner Operator in the advertisement notice. This lapse of the Management is however is of no consequence since the workman had full knowledge of the letter of his appointment as mentioned above and it is to be taken that he conciously accepted that appointment order and complied with that.

The workman has failed to show any rule or regulation by which he was entitled to the grade in which he was working with Haryana Agro Industries Corporation Ltd., Chandigarh. He has not placed on record any document to show in which grade he was working with them. But since the Management has not denied categorically that the workman was working in the grade of 1200-2040 before he had joined on deputation with the Management and the fact that the workman had been paid wages at the rate claimed by the workman, therefore, it has to be taken that the workman was working with the Haryana Agro Industries Ltd. in the grade of 1200-2040 at the time he joined service with the Management, but the fact remains that he had consciously accepted the appointment on deputation with the Management and till his deputation he was entitled to draw his salary in the grade he was working before joining the Management on deputation plus the deputation allowance, but from the day he was absorbed in the Management he was not entitled to that grade as his appointment letter was clear as to in which pay scale he was appointed. He has failed to show any rule, regulation or contract by which he was entitled to the protection of his salary as he was drawing on the day he was permanently absorbed in the Management. In the absence of any agreement, rule and regulaton, the workman cannot claim that he was entitled to the grade of 1200-30-156-EB-40-2040 on his absorption in the Management and if the Management denied that grade to him their action was illegal and unjustified. An employee might have other consideration to accept a lower grade such as regularity of services, light work or other benefits. In my opinion their action was legal and justified as they were not under an obligation, legal or contractual to protect the salary of the workman. The reference therefore, is decided against him holding that the workman is not entitled to the relief he has claimed in this reference.

It has been observed from the documents placed on record that the Management paid the wages to the workman in excess to what he was due and vide their order dated 9th Dec., 1995 directed that an amount of Rs. 5009 paid extra to the workman be recovered from him in monthly instalment of Rs. 300 per month commencing from December 1994. This amount must have been recovered years ago. But to my mind this order was patently wrong as there was no allegation that the workman had been paid extra salary as a result of his misrepresentation. Hon'ble Supreme Court of India in the case of Sahib Ram Vs. State of Haryana and Others reported as 1995 SUPP(1) Sureme Court cases 1, has held that since the excess payment was made to the employee without any misrepresentation by him and on wrong construction by the principle, could not be recovered. Same view was held by the P&H High Court in the case of Shiv Kumar Vs. State of Punjab and Others reported as 2004 (2RSJ 155) and in the case of Kashmir Singh and Others Vs. State of Punjab and Others reported as 2003(3)RSJ 388. Therefore, the Management is directed to reimburse the amount of Rs. 5009, if already recovered, to him within three months from the date this award becomes

enforceable failing which they will have to pay interest on the said amount to the workman at the rate of 9% p.a. from the date the recovery till the amount is paid to him. The reference is answered in these terms. Let a copy of this award be sent to the appropriate govt. and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3099.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1063/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/291/2000-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3099.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1063/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to management of Telecom Department and their workman, which was received by the Central Government on 27-9-2007.

[No. L-40012/291/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 1063/2005

Registered on 20-9-2005

Date of Order : 9-8-2007

Darshan Singh C/o Shri R. K. Sharma, House No. 372, Sector-20-A, Chandigarh. ... Petitioner

Versus

The Principal General Manager, Telecom, Sector-18, Chandigarh. ... Respondent

APPEARANCE

For the Workman : Nemo

For the Management : Shri G. C. Babbar, Advocate

AWARD

The workman continues to be absent. So is the Management. The case was listed earlier for 6th August, 2007 and the workman was absent on that day also and also on the date previous to that. On the request of his Council, the case was fixed for today, for the evidence of work, but his counsel states that the workman has not contacted him so far. On record I do not find even the authority of Mr. A. K. Batra, who represented the workman. He has, therefore, failed to show that he was authorised to represent the workman in this case.

If we go back, we find that the workman behaved in the same fashion earlier also and did not attend the proceedings. The court had to issue notices to him repeatedly and in response to that, he appeared on 10th November, 2006 and 26th February, 2007, but not before or thereafter nor he has produced any evidence in support of his claim.

Vide their order No. L-40012/291/2000/IR (DU) dated 24-8-2000 the Ministry of Labour desired of this Tribunal to find out whether the action of the Chief Manager, Telecom Punjab Circle and the Principle General Manager, Telecom, Chandigarh in ordering disengagement/termination of services of Shri Darshan Singh a workman engaged through Contractor Shri Anil Kumar w.e.f. 27th February, 1999 is just and legal and if not, to what relief the workman is entitled and from which date

On a notice, from the Tribunal, the workman filed Claim Petition by which he claimed that he was appointed as Electrical Helper by the Chief General Manager, Punjab Circle Chandigarh w.e.f. 10th May, 1997 and he worked for them continuously upto 27th February, 1999 when his services were terminated without following the provisions of Section 25-F of the I.D. Act, 1947, for short "Act". He further claimed that by then he had served the Management for 240 days continously 12 months preceding the date of termination of his services. He further claimed that the Management further violated the provisions of the Act by retaining his juniors and terminating his services. The Management denied this claim and stated that they had agreement with a contractor who supplied the labour to them during the period in question, therefore, there never existed a relationship of employee and employer between the parties. They took many more pleas in their Written Statement and stated that they did not violate the provisions of Section 25-F and T, so the claim made by the workman is bad. As stated earlier the workman has not produced any evidence to support his claim and not even his own affidavit, whereas the Management has supported their pleadings with the affidavit of their witness S. R. Kataria. The workman has also not come in the witness box to support his claim.

In the circumstances there is absolutely no evidence to show that the workman was engaged by the

Management and that his services were terminated by them on 22nd February, 1999, by then, he had earned the protection under Section 25-F of the Act and by doing so they violated the provisions of the Act. The workman therefore is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate govt. for necessary action and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3100.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1207/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/161/2000-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1207/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 27-9-2007.

[No. L-40012/161/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 1207/2005

Registered on 14-9-2005

Date of Decision : 20-7-2007

Swaran Singh C/o Shri R. K. Sharma, House No. 372, Sector-20-A, Chandigarh. ... Petitioner

Versus

The Chief General Manager, Telecom, Punjab Circle, Sector-34, Chandigarh. ... Respondent

APPEARANCE

For the Workman : Shri Raj Kumar Sharma & Others AR

For the Management : Shri G. C. Babbar, Advocate

AWARD

The workman continues to be absent. Management appears through Counsel.

It is on record that the workman has not appeared since 22nd August, 2006 continuously. Even earlier he appeared through Counsel or the representative but did not appear in person. Mr. Arun Batra, Advocate, filed his power of attorney on behalf of the workman on 14th June, 2006. He appeared for the workman on 12th February, 2007 and sought time to produce the evidence. It was upon his request that the case was listed for the evidence of the workman on 18th April, 2007. On that day neither the parties appeared nor the workman has produced any evidence. The court showed further indulgence and directed that the workman be awaited but today again he is absent both in person or through his counsel.

The Ministry of Labour, Government of India referred the dispute to this Tribunal vide their No.L-40012/161/2000/IR(DU) dated 31st July, 2000 to find out whether the action of the Chief General Manager, Telecom Punjab Circle and Principal General Manager, Chandigarh, in ordering the disengagement of the workman on 28th February, 1999, who was engaged through Shri R. K. Mittal, Contractor, was just and legal or not. If not, to what relief the workman is entitled to.

The workman filed Claim Petition and stated that he was engaged, as Assistant Line Man, by the Management on 1st January., 1994 and he served them upto 27th February, 1999 on which day, his services were terminated without following the provision of Industrial Dispute Act, of 1947, to be referred hereinafter as "Act", although he had put in 240 days continuous service for the Management. He further claimed that though he is shown to have been engaged through a contractor, but he had worked under the direct supervision of the Management and the work for which he was engaged was perennial in nature, that the Management had sanctioned 500 regular posts of Mazdoor, so as to regularize the service of daily wager, but they did not regularize his services and instead dispensed with it illegally without giving him any show cause notice, charge sheet and without holding any inquiry. He was also not given any chance to serve them, again after his disengagement.

The Management opposed the claim of the workman and stated that neither the Management is an Industry nor the workman is a workman as is defined by the Act. There also never existed any relationship of employee and

employer between them as the workman was neither appointed by the Management nor they had terminated his services. The Management was getting the labour supplied by a contractor. They further denied that the workman had served them continuously. They also denied to have made any payment to the workman representing the wages. They claimed that the Management had issued a tender, for the supply of labour and the contract was allotted to a contractor, to whom they had made the payment for the work done. They have also taken the plea that a daily wager cannot claim regularization as a matter of right to hold a civil post nor the workman was engaged by following the rules meant for making appointments. They have claimed that as and when the posts are advertised the workman can also apply. That the contents of Claim Petition are wrong and hence denied. They have further contested that the Management has violated the provisions of Section 25-F of the Act. They have submitted that the claim made by the workman is without any merit and the same should be dismissed.

The workman filed his rejoinder and re-affirmed the facts stated in the Claim Petition and denied the stand taken by the Management on merits. He also filed his affidavit, but he did not come in the witness box to prove his affidavit. The Management has not filed any affidavit. On record there are only pleadings of the parties in the shape of Claim Petition, Written Statement, rejoinder and the affidavits of the workman and the witness of the Management, but there is not proof to show that the workman was engaged by the Management on 1st January, 1994 and it was they who had terminated his services on 27th February, 1999. The claim made by the workman in his Claim Petition and rejoinder, though supported by his affidavit, but the same has been denied by the Management by filing a detailed Written Statement. On the pleadings, the parties have come almost at the same level. It was the duty of the workman to have proved that he was engaged by the Management and it was they who had terminated his services without following the provisions of the Act. The workman has failed to prove that. Therefore it cannot be said that the workman was engaged by the Management in January, 1994 and it was they who had terminated his services on 27th February, 1999 in violation of provision of the Act. The workman is, therefore, entitled to no relief and the reference is answered against him. Let a copy of this award be sent to the appropriate Government and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 925/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/164/2000-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 925/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between employers in relation to the management of Telecom Department and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-40012/164/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 925/2005

Registered on 14-9-2005

Date of Decision : 20-7-2007

PRESENT

Jagmohan Singh C/o Shri R. K. Sharma, House No. 372, Sector-20A, Chandigarh ... Petitioner

Versus

The Chief General Manager, Telecom, Punjab Circle, Sector-34, Chandigarh. ... Respondent

APPEARANCE

For the Workman : Shri Raj Kumar Sharma & Others AR

For the Management : Shri G. C. Babbar, Advocate..

AWARD

The workman continues to be absent. Management appears through Counsel.

It is on record that the workman has not appeared since 22nd August, 2006 continuously. Even earlier he appeared through Counsel or the representative but did not appear in person. Mr. Arun Batra, Advocate, filed his power of attorney on behalf of the workman on 14th June, 2006. He appeared for the workman on 12th February, 2007 and sought time to produce the evidence. It was upon his

request that the case was listed for the evidence of the workman on 18th April, 2007. On that day neither the parties appeared nor the workman has produced any evidence. The court showed further indulgence and directed that the workman be awaited but today again he is absent both in person or through his Counsel.

The Ministry of Labour, Government of India referred the dispute to this Tribunal vide their No. L-40012/164/2000/IR(DU) dated 31st July, 2000 to find out whether the action of the Chief General Manager, Telecom Punjab Circle and Principal General Manager, Chandigarh, in ordering the disengagement of the workman on 28th February, 1999, who was engaged through Shri R. K. Mittal, Contractor, was just and legal or not. If not, to what relief the workman is entitled to.

The workman filed Claim Petition and stated that he was engaged, as Clerk, by the Management on 10th January, 1996 and he served them upto 27th February, 1999 on which day, his services were terminated without following the provision of Industrial Dispute Act, 1947, to be referred hereinafter as "Act", although he had put in 240 days continuous service for the Management. He further claimed that though he is shown to have been engaged through a contractor, but he had worked under the direct supervision of the Management and the work for which he was engaged was perennial in nature, that the Management had sanctioned 500 regular posts of Mazdoor, so as to regularize the service of daily wager, but they did not regularize his services and instead dispensed with it illegally without giving him any show cause notice, charge sheet and without holding any inquiry. He was also not given any chance to serve them, again after his disengagement.

The Management opposed the claim of the workman and stated that neither the Management is an Industry nor the workman is a workman as is defined by the Act. There also never existed any relationship of employee and employer between them as the workman was neither appointed by the Management nor they had terminated his services. The Management was getting the labour supplied by a contractor. They further denied that the workman had served them continuously. They also denied to have made any payment to the workman representing the wages. They claimed that the Management had issued a tender, for the supply of labour and the contract was allotted to a contractor, to whom they had made the payment for the work done. They have also taken the plea that a daily wager cannot claim regularization as a matter of right to hold a civil post nor the workman was engaged by following the rules meant for making appointments. They have claimed that as and when the posts are advertised the workman can also apply. The contents of Claim Petition are wrong and hence denied. They have further contested that the Management has violated the provisions of Section 25-F of the Act. They have submitted that the claim made by the workman is without any merit and the same should be dismissed.

The workman filed his rejoinder and reaffirmed the facts stated in the Claim Petition and denied the stand taken by the Management on merits. He also filed his affidavit, but he did not come in the witness box to prove his affidavit. On record there are only pleadings of the parties in the shape of Claim Petition, Written Statement, rejoinder and the affidavits of the workman but there is no proof to show that the workman was engaged by the Management on 10th January, 1996 and it was they who had terminated his services on 27th February, 1999. The claim made by the workman in his Claim Petition and rejoinder, though supported by his affidavit and but the same has been denied by the Management by filing a detailed Written Statement. On the pleadings, the parties have come almost at the same level. It was the duty of the workman to have proved that he was engaged by the Management and it was they who had terminated his services without following the provisions of the Act. The workman has failed to prove that. Therefore it cannot be said that the workman was engaged by the Management on 10th January, 1996 and it was they who had terminated his services on 27th February, 1999 in violation of provision of the Act.. The workman is, therefore, entitled to no relief and the reference is answered against him. Let a copy of this award be sent to the appropriate Government and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3102.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 926/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/168/2000-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 926/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-40012/168/2000-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT:

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 926/2005

Registered on 14-9-2005

Date of Decision : 20-7-2007

Harjit Singh, C/o Shri R. K. Sharma, House No. 372, Sector-20A, Chandigarh. ... Petitioner

Versus

The Chief General Manager, Telecom, Punjab Circle, Sector-34, Chandigarh. ... Respondent

APPEARANCE

For the Workman : Shri Raj Kumar Sharma & Others, Advocate

For the Management : Shri G. C. Babbar, Advocate

AWARD

The workman continues to be absent. Management appears through Counsel.

It is on record that the workman has not appeared since 22nd August, 2006 continuously. Even earlier he appeared through Counsel or the representative but did not appear in person. Mr. Arun Batra, Advocate, filed his power of attorney on behalf of the workman on 14th June, 2006. He appeared for the workman on 12th February, 2007 and sought time to produce the evidence. It was upon his request that the case was listed for the evidence of the workman on 18th April, 2007. On that day neither the parties appeared nor the workman has produced any evidence. The court showed further indulgence and directed that the workman be awaited but today again he is absent both in person or through his counsel.

The Ministry of Labour, Government of India referred the dispute to this Tribunal vide their No. L-40012/168/2000/IR(DU) dated 31st July, 2000 to find out whether the action of the Chief General Manager, Telecom Punjab Circle and Principal General Manager, Chandigarh, in ordering the disengagement of the workman on 28th February, 1999, who was engaged through Messrs Gupta, Contractors, was just and legal or not. If not, to what relief the workman is entitled to.

The workman filed Claim Petition and stated that he was engaged as Assistant Cable Jointer, by the Management on 15th September, 1997 and he served them upto 27th February, 1999 on which day, his services were terminated without following the provision of Industrial Disputes Act, 1947, to be referred hereinafter as "Act", although he had put in 240 days continuous service for the Management. He further claimed that though he is shown to have been engaged through a contractor, but he had worked under the direct supervision of the Management and the work for which he was engaged was perennial in nature, that the Management had sanctioned 500 regular posts of Mazdoor, so as to regularize the service of daily wager, but they did not regularize his services and instead dispensed with it illegally without giving him any show cause notice, chargesheet and without holding any inquiry. He was also not given any chance to serve them, again after his disengagement.

The Management opposed the claim of the workman and stated that neither the Management is an Industry nor the workman is a workman as is defined by the Act. There also never existed any relationship of employee and employer between them as the workman was neither appointed by the Management nor they had terminated his services. The Management was getting the labour supplied by a contractor. They further denied that the workman had served them continuously. They also denied to have made any payment to the workman representing the wages. They claimed that the Management had issued a tender, for the supply of labour and the contract was allotted to a contractor, to whom they had made the payment for the work done. They have also taken the plea that a daily wager cannot claim regularization as a matter of right to hold a civil post nor the workman was engaged by following the rules meant for making appointments. They have claimed that as and when the posts are advertised the workman can also apply. That the contents of Claim Petition are wrong and hence denied. They further contested that the Management has violated the provisions of Section 25-F of the Act. They have submitted that the claim made by the workman is without any merit and the same should be dismissed.

The workman filed his rejoinder and reaffirmed the facts stated in the Claim Petition and denied the stand taken by the Management on merits. He also filed his affidavit, but he did not come in the witness box to prove his affidavit. The Management has filed the affidavit of Shri Jasbir Walia, SDE. On record there are only pleadings of the parties in the shape of Claim Petition, Written Statement, rejoinder and the affidavits of the workman and the witness of the Management, but there is no proof to show that the workman was engaged by the Management on 15th September, 1996 and it was they who had terminated his services on 27th February, 1999. The claim made by the workman in his Claim Petition and rejoinder, though supported by his affidavit, but the same has been denied by the Management by filing a detailed Written Statement. On the pleadings, the parties have come almost at the same level. It was the duty of the workman to have proved that

he was engaged by the Management and it was they who had terminated his services without following the provisions of the Act. The workman has failed to prove that. Therefore it cannot be said that the workman was engaged by the Management on 15th September, 1997 and it was they who had terminated his services on 27th February, 1999 in violation of provision of the Act. The workman is, therefore, entitled to no relief and the reference is answered against him. Let a copy of this award be sent to the appropriate Government and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 539/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-09-2007 को प्राप्त हुआ था।

[सं. एल-40012/269/2000-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 539/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 27-09-2007.

[No. L-40012/269/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 539/2005

Registered on : 22-08-2005

Date of Decision : 20-07-2007

Jasbir Singh S/o. Shri Sukhdev Singh,
House No. 2167, Sector, 20-C,
Chandigarh ... Petitioner

Versus

The General Manager,
Telecom, Sector-18,
Chandigarh ... Respondent

APPEARANCE

For the Workman : Shri Om Parkash Singh
AR

For the Management : Shri G.C. Babbar
Advocate

AWARD

The workman continues to be absent. On 27th Nov., 2006 it was noticed that the workman has not filed the Claim Statement although the Management filed their reply and also supported the same with the affidavit of their witness. The workman filed rejoinder without filing the Claim Statement. He also filed his affidavit. Despite directions to him, he has not filed the Claim Statement. On 12th Feb., 2007, the parties appeared through their counsel but the workman did not appear nor he filed the Claim Statement. A direction was given to the workman to produce his evidence on the next date which was fixed for 18th April, but on that day neither he appeared nor produced any evidence. Even today he is not present. The AR of the workman Shri Om Parkash Singh is stated to be dead and Shri A.K. Batra, Advocate appearing for him has not appeared after 12th Feb., 2007. Thus the workman is absent despite due service on him. He has not filed his Claim Statement nor has come forward to admit or deny the contents of his rejoinder and affidavit. He has, therefore, produce no evidence in support of his claim, as is made out by him in his affidavit.

The Ministry of Labour, Government of India vide their Order No. L-40012/269/2000/IR(DU) dated 29th August, 2000 referred the dispute between the parties for the adjudication of this Tribunal and desired to know whether the Management had terminated the services of the workman and if so whether the action of the Management was just and legal and if not to what relief the workman was entitled to. There is no Claim Statement on record. On oath the workman has claimed, in his affidavit, that he was employed by the Junior Telecom Officer, sub-division, Chandigarh from 21st January, 1998 and he served the Management upto 27th Feb., 1999. He had been correcting the faults in the Telephone Nos. and also used to do the jumpering work for new, faulty and under shift telephones. He also used to attend to the routine works; that the Management illegally terminated his services without any reason, chargesheet or inquiry and also did not pay him the retrenchment compensation; that he is without any job since the day of his disengagement.

The Management has opposed the claim of the workman and stated that neither the Management is an

Industry nor the workman is a workman as is defined by the Act. There also never existed a relationship of employee and employer between them as the workman was neither appointed by the Management nor they had terminated his services. The Management was getting the labour supplied by a contractor. They further denied that the workman had served them continuously. They also denied to have made any payment to the workman representing the wages. They claimed that the Management had issued a tender, for the supply of labour and the contract was allotted to a contractor, to whom they had made the payment for the work done. They have also taken the plea that a daily wager cannot claim regularization as a matter of right to hold a civil post nor the workman was engaged by following the rules meant for making appointments. They have claimed that as and when the posts are advertised the workman can also apply. That the contents of Claim Petition are wrong; hence denied. They have further contested that the Management has violated the provisions of Section 25-F of the Act. They have submitted that the claim made by the workman is without any merit and the same should be dismissed.

On record I do not find any evidence to show that the workman had been engaged by the Management on 2nd January, 1999 and he had served them on 27th Feb., 1999 as is claimed by him. The assertions made by him in his affidavit have been denied by the Management in their Written Statement and by the affidavit of their witness. The workman has not appeared as a witness to admit or deny the contents of his affidavit and to stand to the cross examination of the Management. Whatever he has claimed in the affidavit has been denied. To support their claim the Management has placed on record the copy of the agreement for supply of labour for the period beginning from 1st March, 1998 for one year. This period includes in it the period during which the workman claims that he had served the Management. This claim of the Management has not been rebutted by the workman by any evidence. Thus he has failed to show that he was engaged by the Management and he had served them from 1st Feb., 1988 till 27th Feb., 1999 and the Management terminated his services without following the mandate of law as contained in the I.D. Act, 1947. The workman has thus failed to prove his case. On record I do not find any evidence to show that the workman was engaged by the Management; and that it was they who had terminated his services. In that situation the question of justification and legality of the disengagement of the workman does not arise qua the Management. Since the workman has failed to prove that his services were terminated by the Management and his disengagement was unjust and illegal, therefore, he is not entitiled to any relief. The award is passed against him holding that he is not entitled to any relief. Let a copy of this award be sent to the appropriate Government and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3104.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 928/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-09-2007 को प्राप्त हुआ था।

[सं. एल-40012/290/2000-आई. आर. (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 928/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 27-09-2007.

[No. L-40012/290/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 928/2005

Registered on : 14-09-2005

Date of Decision : 18-07-2007

Makhan Singh, C/o Shri R.K. Sharma,
House No. 372, Sector-20A,
Chandigarh ... Petitioner

Versus

The Chief General Manager,
Telecom, Punjab Circle,
Sector-34,
Chandigarh ... Respondent

APPEARANCE

For the Workman : Shri Raj Kumar Sharma & Others
Advocate

For the Management : Shri G.C. Babbar
Advocate

AWARD

The workman continues to be absent. Management appears through Counsel.

It is on record that the workman has not appeared since 5th Dec., 2006 continuously. Even earlier he appeared through Counsel or the representative but did not appear in person. It was brought to the notice of the Court that Shri Om Prakash the representative of the workman has expired, therefore, fresh notice was given to the workman but he did not appear. Mr. Arun Batra, Advocate, filed memo of his appearance, on behalf of the workman on 19th Sep., 2006, but he could not file the authority letter and finally withdrew from appearing for the workman. It was in these circumstances that fresh notice under R/C was issued to the workman on 14th March, 2007, on his residential address in Tehsil Kharar which was sent under Postal Receipt No. 1340 on 19th March, 2007, directing him to appear in the case on 17th April, 2007. The workman did not appear on that day. His presence was still awaited and the case was posted for his appearance and production of evidence, for today. Again he is not present nor anybody else has appeared on his behalf. From the conduct of the workman it is clear that he is not interested in following his case that is why he has not come and has also not produced any evidence.

The Ministry of Labour, Government of India referred the dispute to this Tribunal vide their No. L-40012/290/2000/IR(DU) dated 24th August, 2000 to find out whether the action of the Chief General Manager, Telecom Punjab Circle and Principal General Manager, Chandigarh, in ordering the disengagement of the workman on 27th Feb., 1999, who was engaged through Shri Anil Kumar, Contractor, was just and legal or not. If not, to what relief the workman is entitled to.

The workman filed Claim Petition and stated that he was engaged, as Peon, by the Management on 1st May, 1997 and he served them upto 27th Feb., 1999 on which day, his services were terminated without following the provision of Industrial Disputes Act, 1947, to be referred hereinafter as "Act", although he had put in 240 days continuous service for the Management. He further claimed that though he is shown to have been engaged through a contractor, but he had worked under the direct supervision of the Management and the work for which he was engaged was perennial in nature, that the Management had sanctioned 500 regular posts of Mazdoor, so as to regularize the service of daily wager, but they did not regularize his services and instead dispensed it illegally without giving him any show cause notice, chargesheet and without holding any inquiry. He was also not given any chance to serve them, again after his disengagement.

The Management opposed the claim of the workman and stated that neither the Management is an Industry nor the workman is a workman as is defined by the Act. There also never existed any relationship of employee and employer between them as the workman was neither appointed by the Management nor they had terminated his services. The Management was getting the labour supplied by a contractor. They further denied that the workman had served them continuously. They also denied to have made any payment to the workman representing the wages. They claimed that the Management had issued a tender, for the supply of labour and the contract was allotted to a contractor, to whom they had made the payment for the work done. They have also taken the plea that a daily wager cannot claim regularization as a matter of right to hold a civil post nor the workman was engaged by following the rules meant for making appointments. They have claimed that as and when the posts are advertised the workman also apply on the same contents of Claim Petition, are wrong and hence denied. They further contested that the Management has violated the provisions of Section 25-F of the Act. They have submitted that the claim made by the workman is without any merit and the same should be dismissed.

The workman filed his rejoinder and re-affirmed the facts stated in the Claim Petition and denied the stand taken by the Management on merits. He also filed his affidavit, but he did not come in the witness box to prove his affidavit. The Management also filed an affidavit of their Assistant General Manager and contested the claim of the workman. On record there are only pleadings of the parties in the shape of Claim Petition, Written Statement, rejoinder and the affidavits of the workman and the witness of the Management, but there is no proof to show that the workman was engaged by the Management on 1st May, 1997 and it was they who had terminated his services on 27th Feb., 1999. The claim made by the workman in his Claim Petition and rejoinder, though supported by his in affidavit and but the same has been denied by the Management filing a detailed Written Statement, supported by the affidavit of their AGM. On the pleadings the parties have come almost at the same level. It was the duty of the workman to have proved that he was engaged by the Management and it was they who had termined his services without following the provisions of the Act. The workman has failed to prove that. Therefore it cannot be said that the workman was engaged by the Management in May, 1997 and it was they who had terminated his services on 27th Feb., 1999 in violation of provision of the Act. The workman is, therefore, entitled to no relief and the reference ia answered against him. Let a copy of this award be sent to the appropriate Government and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं-II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1008/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-40012/69/2000-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1008/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 27-09-2007.

[No. L-40012/69/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1008/2005

Registered on : 17-09-2005

Date of Decision : 14-07-2007

Amarjeet Singh C/o Shri N.K. Jeet,
President, Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road,
Bhatinda (Punjab) ... Petitioner

Versus

The General Manager,
Department of Telecom,
Hoshiarpur .... Respondent

APPEARANCE

For the Workman : Shri N.K. Jeet
AR

For the Management : Ms. Deepali Puri
Advocate

AWARD

The workman continues to be absent. He was present two dates earlier on 27th Feb., 2007, but before that he continuously remained absent for two dates. Even on dates earlier to that he did not appear many a times. The record of the file shows that the presence of the workman on 27th Feb., 2007 was, apparently, as a result of notice to him under R/C vide postal receipt no. 3922 dated 28th Nov., 2006. The Tribunal is, therefore, satisfied that the workman has not shown seriousness in prosecuting his claim. The Management is present through counsel. The workman, in support of his claim, has also not proved his affidavit or produced any other evidence.

The Government of India, Ministry of Labour vide their order No. L-40012/69/2000/IR(DU) dated 31st May, 2000 has desired of this Tribunal to adjudicate upon the following reference :—

> "Whether the action of the General Manager, Telecom, Hoshiarpur (Pb.) in ordering disengagement/termination of services of Shri Amarjeet Singh a workman, engaged through contractor Shri Ashok Kumar Sharma, w.e.f. 1st March, 1999 is legal and justified? If not, to what relief the workman is entitled and from which date?"

On record I do not find any evidence to show that the Management had engaged the workman and it was they who had disengaged him from service. The reference itself contains that the engagement of the workman was through a contractor and if it was so then how the Management could have terminated his services from 1st March, 1999. The workman has produced no evidence to show that he had worked as a workman in the office of SDOT Dasyua from 1st March, 1996 till 28th Feb., 1999, on a salary of Rs. 2138/-. The Management in their Written Statement has denied the claim of the workman and supported the same with copies of agreements and the affidavit of their witness, SDE Shri B.S. Thethi. Thus the claim made by the workman is denied by the Management by equal strength of pleadings and evidence. Besides they have produced the copies of the agreement which show that the Management had entered into a contract with one Shri Ram Krishan to provide labour to the Management from 13th Dec., 1996 to 12th Dec., 1997 and then from 1st April, 1998 to 31st March, 1999. The workman has failed to rebut the prima facie evidence produced by the Management. He was otherwise required to stand on his legs and prove his Claim.

On record I do not find any evidence to show that General Manager, Telecom Hoshiarpur had terminated his services of Amarjeet Singh who was engaged through a contractor Ashok Kumar w.e.f. 1st March, 1999. Since the workman has failed to prove that his services were disengaged by the Management, therefore, the question

of whether that termination of service of the workman was justified and legal or not does not arise. In view of this the workman is not entitled to any relief. The award is passed against him holding that he is not entitled to any relief. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3106.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी एस डब्ल्यू सी आर टी आई रिसर्च सेन्टर, चण्डीगढ़ के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 892/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-09-2007 को प्राप्त हुआ था।

[सं. एल-42012/68/89-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3106.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 892/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CSWCRTI Research Centre, Chandigarh and their workman, which was received by the Central Government on 27-09-2007.

[No. L-42012/68/89-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 892/2005

Registered on : 12-09-2005

Date of Decision : 11-06-2007

Suraj Bali ... Petitioner

Versus

The Management of CSWCRTI Research Centre, Sector-27, Madhya Marg, Chandigarh and another through its Office Incharge ... Respondent

APPEARANCE

For the Workman : Mr. Jasvinder Kumar Bakshi Advocate

For the Management : Mr. M.L. Basur Advocate

AWARD

This a reference under Section 10 of the I.D. Act. 1947, for short "Act" received from Government of India. Ministry of Labour, vide their No. L-42012/68/89-IR(DU) dated 30th October, 1989. The reference reads as under :—

> "Whether the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of Shri Suraj Bali, daily paid worker w.e.f. 17-06-1988 is just, fair and legal? If not what relief the worker concerned is entitled to?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri G.S. Gaddu. Assistant Admn. Officer. The parties have also placed on record. A copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They have also produced copies of other documents besides photocopy of the judgments on the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 2nd July, 1981; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said Labour Court, the parties arrived at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workman withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus the termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not an Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is

their submission that the workman was engaged as a daily wager in September, 1984 and he did not work for 240 days continuously in the year before the date of his disengagement therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on 16th June, 1988. Admitting that a settlement was arrived at between the parties, according to which the workers were categorized in two i.e. one who had served the Management for 240 days, and two those who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be re-employed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wages was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G. S. Gaddu proved his affidavit and stood to the cross examination of the counsel for the workman. He admitted that the goods produce by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and fruits, tenders used to be called from the market. He, admitted that an agreement was arrived at between the parties on 4th April, 1988 and before terminating his services, no notice was given to the workman, and nor to his Union, that no work was available as no funds were available, therefore, no work could be done and therefore there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular; and that on the retirement of senior workmen the juniors were made regular. He however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose of the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore, is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S. Gaddu, Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and disposed of the same by auction besides by distributing the same among the workers on payment. The Hon'ble Supreme Court in a famous full bench of seven judges decision in the case of Bangalore Water Supply and Sewarage Board Vs. A. Rajjappa reported as 1978 LAB I.C. 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down is that in an establishment where there is a systematic activity, organized by co-operation between the employer and employees, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an Industry in the enterprise, prima facie. Their Lordship further held that even the professions, clubs, educational institution cooperatives, research institutes and other kindred adventures, if fulfilled the triple test, are an Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala, and therefore, it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under Section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the Management have admitted that a settlement was arrived at between the parties during the course of proceedings in the Labour Court at Ambala. The terms of settlement reads as under :—

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st

Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal, Ambala.

2. It is agreed by both the parties that the 20 workmen whose names exist in Annexure-II of the settlement will be employed provided the Union or the workmen concerned withdrew their cases from the Labour Court at Ambala.

3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.

4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C. (C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In reply to the claim made by the workman, in para no. 6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back on service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workman was re-employed on 8th April, 1988 and that his services were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of Shukla Mansika Industry Private Ltd. Vs. Workmen (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees Union, reported as 1997 2 LLJ 631, highlighted the object of sub-section 2 of Section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace, accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of the law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of Industrial disputes which is the principle object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did not agree to the period for which the settlement was to remain in force. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e. 8th April, 1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the of Deccan Tile Works Vs. Their Workmen reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding ipso facto on the expiry of the period as mentioned in the sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without complying with the requirements of Sub-Section 2 of Section 19 of the Act. In this regard, besides the case of Deccan Tile Works (Supra), State of Kerala Vs. Antony Decruz reported as (1966) 1 LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988. The workman performed his part of the contract by withdrawing his claim from the Labour Court, Ambala. The Management re-employed him but terminated his service in violation of provisions of Section 19(2) of the Act. The Management has given the reasons that since they did not have the grants therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the Management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the Management violated the sanctity of the settlement which was protected by Section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of Sub-Section 2 of Section 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated the services of the workman in violation of Section 19 Sub Clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the Act and the same is declared as bad in law. The disengagement done by an act, which declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the

workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of Section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was given by the Management and they unilaterally terminated the services of the workman within 6 months which they were not entitled to do under the statue. Thus the workman is to be treated in the employment of the Management for further two months rather till date since the Management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favour of the workman. In terms of Section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. As per his own claim he had joined service with the Management on 1st October, 1957. If he was minimum of 18 years of age at that time by now he is round about 70 years of age and cannot be presumed to be eligible for the service of the Management. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages. but he is entitled to all service benefits including his regularization as if he was entitled for that what for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs. 50,000 as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date this award becomes enforceable to find out as to what benefits he is entitled to. In case the Management fails to do it, the workman shall also be entitled for the interest on the amount of compensation awarded to him at the rate of 9% p.a. from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3107.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. एस. डब्ल्यू. सी. आर. टी. आई. रिसर्च सेन्टर, चण्डीगढ़ के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या-895/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल 42012/109/88-डी-II (बी)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3107.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 895/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CSWCRTI Research Centre, Chandigarh and their workmen, which was received by the Central Government on 27-9-2007.

[No. L-42012/109/88-D-II (B)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 895/2005

Registered on : 12-9-2005

Date of Decision : 11-6-2007

Hukam Chand ... Petitioner

Versus

The Management of CSWCRTI Research Centre,
Sector-27, Madhaya Marg,
Chandigarh and Another,
Through its Office Incharge ... Respondent

APPEARANCE

For the Workman : Mr. Jasvinder Kumar Bakshi, Advocate

For the Management : Mr. M.L. Basur, Advocate

AWARD

This is a reference under Section 10 of the I.D. Act, 1947, for short "Act" received from Government of India, Ministry of labour, vide their No.-L42012/109/88-D-II (B) dated 1—3rd Nov., 1989. The reference reads as under:

> "Whether the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of Shri Hukum Chand S/o Shri Bachna, daily paid worker w.e.f. 28th May, 1988 is just, fair and legal ? If not what relief the worker concerned is entitled to ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri. G.S. Gaddu, Assistant Admn. Officer. The parties have also placed on record. A copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They have also produced copies of other documents besides photo copy of the judgements of the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 1st July, 1981; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said labour court, the parties arrived at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workmen withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is their submission that the workman was engaged as a daily wager in May, 1984 and he did not work for 240 days continuously in the year before the date of his disengagement therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on 28th May, 1988. Admitting that a settlement was arrived at between the parties, according to which the workers were categorized in two i.e. one who has served the Management for 240 days, and two those who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be re-employed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wages was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G.S. Gaddu proved his affidavit and stood to the cross examination of the counsel for the workman. He admitted that the goods produce by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and fruits, tenders used to be called from the market. He admitted that an agreement was arrived at between the parties on 4th April, 1988 and before terminating his services, no notice was given to the workman, and nor to his Union, that no work was available as no funds were available, therefore, no work could be done and therefore there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular, and that on the retirement of senior workmen the juniors were made regular. He however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and I have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose of the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore,

is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S. Gaddu, Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and disposed of the same by auction besides by distributing the same amount the workers on payment. The Hon'ble Supreme Court in a famous full bench of seven judges decision in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajjapa reported as 1978 LAB I.C. 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down, that in an establishment where there is a systematic activity, organized by co-operation between the employer and employee, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an Industry in the enterprise, prima facia. Their Lordship further held that even the professions, clubs, educational institution, cooperatives, research institutes and other kindred adventures, if fulfilled the triple test, are an Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala and therefore it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under Section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the management have admitted that a settlement was arrived at between the parties during the course of proceedings in the labour court at Ambala. The terms of settlement reads as under :

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal Ambala.
2. It is agreed by both the parties that the 20 workmen whose name exist in Annexure-II of the settlement will be employed provided the Union or the workman concerned withdrew their cases from the Labour Court at Ambala.
3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.
4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C (C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In reply to the claim made by the workman, in para No. 6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back on service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workman was re-employed on 8th April, 1988 and that his service were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of Shukla Mansika Industry Private Ltd. Vs. Workmen (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank employees Union, reported as 1997 2 LLJ 631, highlighted the object of sub-section 2 of Section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace, accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of Industrial disputes which is the principle object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did

not agree to the period for which the settlement was to remain inforce. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e. 8th April, 1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the case of Deccan Tile Works Vs. their workmen reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding ipso facto on the expiry of the period as mentioned in the sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without complying with the requirements of Sub-section, 2 of the 19 of the Act. In this regard, besides the case of Deccan Tile Works (Supra), State of Kerala Vs. Antony Decruz reported as (1966) 1LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988. The workman performed his part of the contract by withdrawing his claim from the Labour Court, Ambala. The Management re-employed him but terminated his service in violation of provisions of Section 19(2) of the Act. The management has given the reasons that since they did not have the grant therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the management violated the sanctity of the settlement which was protected by Section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of Sub-section 2 of the 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated the services of the workman in violation of Section 19 sub Clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the act and the same is declared as bad in law. The disengagement done by an act. which is declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of the section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was given by the Management and they unilaterally terminated the services of the workman within 6 months which they were not entitled to do under the statute. Thus the workman is to be treated in the employment of the Management for further two months rather till date since the management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favor of the workman. In terms of Section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages, but he is entitled to all service benefits including his regularization as if he was entitled for that what for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs. 50,000 as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date this award becomes enforceable to find out as to what benefits he is entitled to. In case the Management fails to do it, the workman shall also be entitled for the interest on the amount of compensation awarded to him at the rate of 9% p.a. from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का.आ. 3108.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. एस. डब्ल्यू. सी. आर. टी. आई. रिसर्च सेन्टर, चण्डीगढ़ के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या-890/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल 42012/110/88-डी-II (बी)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3108.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 890/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CSWCRTI Research Centre, Chandigarh and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/110/88-D-II (B)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 890/2005

Registered on : 15-11-1989

Date of Decision : 11-6-2007

Jangi S/o. Shri Nathu ... Petitioner

Versus

The Management of CSWCRTI Research Centre,
Sector-27, Madhaya Marg,
Chandigarh and Another,
Through its Office Incharge ... Respondent

APPEARANCE

For the Workman : Mr. Jasvinder Kumar Bakshi, Advocate

For the Management : Mr. M.L. Basur, Advocate

AWARD

This reference under Section 10 of the I.D. Act, 1947, for short "Act" received from Government of India, Ministry of labour, vide their No. L-42012/110/88-D-II (B) dated 1—9th Nov., 1989. the reference reads as under :

> "Whether the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of Shri Jangi S/o. Shri Nathu, daily paid worker w.e.f. 26th May, 1988 is just, fair and legal ? If not what relief the worker concerned is entitled to ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri. G.S. Gaddu, Assistant Admn. Officer. The parties have also placed on record. A copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They also produced copies of other documents besides photocopy of the judgements of the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 1st Nov., 1956; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said Labour Court, the parties arrived at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workmen withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is their submission that the workman was engaged as a daily wager in May, 1981 and he did not work for 240 days continuously in the year before the date of his disengagement therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on 1st June, 1986. Admitting that a settlement was arrived at between the parties, according to which the workers

were categorized in two i.e. one who had served the Management for 240 days, and two who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be re-employed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wages was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G. S. Gaddu proved his affidavit and stood to the cross-examination of the counsel for the workman. He admitted that the goods produce by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and fruits, tenders used to be called from the market. He admitted that an agreement was arrived at between the parties on 4th April, 1988 and before terminating his services, no notice was given to the workman, and nor to his Union, that no work was available as no funds were available, therefore, no work could be done and therefore there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular; and that on the retirement of senior workmen the juniors were made regular. He however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose of the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore, is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S. Gaddu. Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and disposed of the same by auction besides by distributing the same amount the workers on payment. The Hon'ble Supreme Court in a famous full bench of seven judges decision in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajjapa reported as 1978 LAB I.C. 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down is that in an establishment where there is a systematic activity, organized by co-operation between the employer and employee, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an Industry in the enterprise, prima facie. Their Lordship further held that even the professions, clubs, educational institution cooperatives, research institutes and other kindred adventures, if fulfilled the triple test, are and Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala and therefore it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the management have admitted that a settlement was arrived at between the parties during the course of proceedings in the labour court at Ambala. The terms of settlement reads as under :

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal, Ambala
2. It is agreed by both the parties that the 20 workmen whose name exist in Annexure-II of the settlement will be employed provided the Union or the workman concerned withdrew their cases from the Labour Court at Ambala.

3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.

4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C (C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In reply to the claim made by the workman, in para No. 6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back on service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workmen was re-employed on 8th April, 1988 and that his services were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of Shukla Mansika Industry Private Ltd. Vs. Workmen (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees Union, reported as 1997 2 LLJ 631, highlighted the object of sub-section 2 of Section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace, accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of Industrial disputes which is the principal object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did not agree to the period for which the settlement was to remain force. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e. 8th April, 1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the case of Deccan Tile Works Vs. Their Workmen reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding ipso facto on the expiry of the period as mentioned in the sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without compiying with the requirements of Sub-Section 2 of Section 19 of the Act. In this regard, besides the case of Deccan Tile Works (Supra), State of Kerala Vs. Antony Decruz reported as (1966) 1 LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988. The workman performed his part of the contract by withdrawing his claim from the Labour Court, Ambala. The Management re-employed him but terminated his service in violation of provisions of Section 19(2) of the Act. The Management has given the reasons that since they did not have the grants, therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the Management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the Management violated the sanctity of the settlement which was protected by Section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of sub-section 2 of Section 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated the services of the workman in violation of Section 19 of sub-clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the Act and the same is declared as bad in law. The disengagement done by an act, which is declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of Section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was given by the Management and they unilaterally terminated

the services of the workman within 6 months which they were not entitled to do under the statute. Thus the workman is to be treated in the employment of the Management for further two months rather till date since the Management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favour of the workman. In terms of Section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. As per his claim he had joined service with the Management on 1st October, 1957. If he was minimum of 18 years of age at that time by now he is round about 70 years of age and cannot be persumed to be eligible for the service of the Management. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages, but he is entitled to all service benefits including his regularization as if he was entitled for that what for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs. 50,000 as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date this award becomes enforceable to find out as to what benefits he is entitled to. In case the Management fails to do it, the workman shall also be entitled for the interest on the amount of compensation awarded to him at the rate of 9% p.a. from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3109.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी एस डब्ल्यू सी आर टी आई रिसर्च सेन्टर, चण्डीगढ़ के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ सं. 896/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/107/88-डी-II (बी)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 896/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CSWCRTI Research Centre, Chandigarh and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/107/88-D-II (B)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 896/2005

Registered on : 13-09-2005

Date of Decision : 11-06-2007

Ram Rattan ... Petitioner

Versus

The Management of CSWCRTI Research Centre, Sector-27, Madhya Marg, Chandigarh and Another through its Office Incharge ... Respondent

APPEARANCE

For the Workman : Shri Jasvinder Kumar Bakshi, Advocate

For the Management : Shri M.L. Basur, Advocate

AWARD

This reference under Section 10 of the I.D. Act, 1947, for short "Act" received from Government of India, Ministry of Labour, vide their No. L-42012/107/88-D-II(B) dated 1—3rd Nov., 1989. The reference reads as under :—

> "Whether the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of Shri Ram Rattan S/o Shri Dwarka Dass, daily paid worker w.e.f. 1st June, 1988 is just, fair a and legal? If not what relief the worker concerned is entitled to?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri G.S. Gaddu, Assistant Admn. Officer. The parties have also placed on record a copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They have also produced copies of other documents besides photocopy of the judgments on the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 2nd Feb., 1981; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said Labour Court, the parties arrived at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workman withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus the termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not an Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is their submission that the workman was engaged as a daily wager in May, 1984 and he did not work for 240 days continuously in the year before the date of his disengagement therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on 1st June, 1988. Admitting that a settlement was arrived at between the parties, according to which the workers were categorized in two i.e. one who had served the Management for 240 days, and two those who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be re-employed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wages was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G. S. Gaddu proved his affidavit and stood to the cross examination of the counsel for the workman. He admitted that the goods produced by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and fruits, tenders used to be called from the market. He admitted that an agreement was arrived at between the parties on 4th April, 1988 and before terminating his services, no notice was given to the workman, and nor to his Union, that no work was available as no funds were available, therefore, no work could be done and therefore there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular; and that on the retirement of senior workmen the juniors were made regular. He however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose of the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore,

is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S. Gaddu, Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and dispose of the same by auction besides by distributing the same among the workers on payment. The Hon'ble Supreme Court in a famous full bench of seven judges decision in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajjapa reported as 1978 LAB I.C. 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down, that in an establishment where there is a systematic activity, organized by co-operation between the employer and employees, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an Industry in the enterprise, prima facie. Their Lordship further held that even the professions, clubs, educational institution cooperatives, research institutes and other kindred adventures, if fulfilled the triple test, are an Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala, and therefore, it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the Management have admitted that a settlement was arrived at between the parties during the course of proceedings in the Labour Court at Ambala. The terms of settlement reads as under :—

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal Ambala.
2. It is agreed by both the parties that the 20 workmen whose name exist in Annexure-II of the settlement will be employed provided the Union or the workman concerned withdrew their cases from the Labour Court at Ambala.
3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.
4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C. (C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In reply to the claim made by the workman, in para no. 6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back on service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workman was re-employed on 8th April, 1988 and that his services were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of Shukla Mansika Industry Private Ltd. Vs. Workmen (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank employees Union, reported as 1997 2 LLJ 631, highlighted the object of sub-section 2 of section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace, accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of Industrial disputes which is the principle object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding

on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did not agree to the period for which the settlement was to remain force. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e. 8th April, 1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the case of Deccan Tile works Vs. Their workmen reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding ipso facto on the expiry of the period as mentioned in the sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without complying with the requirements of Sub-Section, 2 of the 19 of the Act. In this regard, besides the case of Deccan tile works (Supra), State of Kerala Vs. Antony Decruz reported as (1966) 1 LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988. The workman performed his part of the contract by withdrawing his claim from the Labour Court Ambala. The Management re-employed him but terminated his service in violations of provisions of Section 19(2) of the Act. The Management has given the reasons that since they did not have the grants therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the Management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the Management violated the sanctity of the settlement which was protected by section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of Sub-Section 2 of Section 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated the services of the workman in violation of Section 19 Sub- Clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the act and the same is declared as bad in law. The disengagement done by an act, which is declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of the Section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was given by the Management and they unilaterally terminated the services of the workman within 6 months which they were not entitled to do under the statue. Thus the workman is to be treated in the employment of the Management for further two months rather till date since the Management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favour of the workman. In terms of Section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. As per his own claim he had joined service with the Management on 1st October, 1957. If he was minimum of 18 years of age at that time by now he is round about 70 years of age and cannot be presumed to be eligible for the service of the Management. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages, but he is entitled to all service benefits including his regularization as if he was entitled for that what for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs. 50,000 as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date of this award becomes enforceable to find out as to what benefits he is entitled to. In case the Management fails to do it, the workman shall also be entitled for the interest on the amount

of compensation awarded to him at the rate of 9% p.a. from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिट्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1090/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/90/93-आईआर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1090/2005) Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/90/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1090/2005

Registered on : 21-09-2005

Date of Decision : 14-07-2007

Dharam Pal S/o Shri Pheru Ram,
Paul Nagar, Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocte
For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their Order No. L-42012/90/93-IR(D.U.) dated 24th August, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :—

"Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Dharam Pal, Casual Worker w.e.f. 1st April, 1988 is legal and justified? If not what relief he is entitled to and from what date?"

The notice of the reference was given to the parties who appeared through their Counsel and filed their respective claims in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim beside that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1982 and he served them upto 31st Dec., 1990. The Management all, of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employee of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services: that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions

of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the Management for 240 days, therefore, the termination of his services was violative of the Provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the Management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the Management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgement, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management,though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estoppel against him and stated that the workman had served the management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period up to 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and Others, the workman had the right of consideration for regularization, having served the management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their

claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribuion of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as a Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board versus A Rajappa reported as 1978 Lab IC 778." The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/ or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their persuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Dharam Pal, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting backward he worked for the Management 12 days in March, 1988; 22 days in January, 1988; 24 days in November, 1987; 24 days in Oct., 1987; 21 days in May, 21 days in April i.e. for 128 days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिच्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1088/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/97/93-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1088/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/97/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1088/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Ram Lal S/o Shri Sher Singh
R/o. Village Pundrak,
District Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocte

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their order No. L-42012/97/93-IR (D.U.) dated 24th August, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Ram Lal, Casual Worker w.e.f. 1st April, 1988 is legal and justified ? If not, what relief he is entitled to and from what date ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claims in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim besides that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1986 and he served them upto 31st Dec., 1990. The Management all of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employees of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those

who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the management for 240 days, therefore, the termination of his services was violative of the Provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the management after 1st January, 1988. The Management has destroyed the muster-rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and Others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or service and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that the along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estopped against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the Management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the years 1987 to 1990. As per their own saying they had destroyed the record only for the period up to 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there

existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as a Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board *Vs.* A Rajappa reported as 1978 Lab IC 778." The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Ram Lal, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting backward he worked for the Management 13 days in March, 1988; 19 days in Feb., 1988; 22 days in January, 1988; 20½ days in November, 1987; 20 days in Oct., 1987; 16 days in Sept., 1987; 21 days in August, 1987; 18½ days in July, 1987; 18½ days in May, 1987; 12 days in April, 1987 i.e. for 170½ days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of Section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3112.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिच्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1094/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/99/93-आई आर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1094/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/99/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1094/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Inder Singh,
R/o Saidpur,
District Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their order No. L-42012/99/93-IR (D.U.) dated 31st October, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

> "whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Inder Singh, Casual Worker w.e.f. 1st April, 1988 is legal and justified ? If not, what relief he is entitled to and from what date ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claim in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim beside that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1983 and he served them upto 31st Dec., 1990. The Management, all of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employee of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favoritism in selecting those

who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the Management for 240 days, therefore, the termination of his services was violative of the provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the Management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the Management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgement, 276, it is claimed by the Management that; so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that the along with other retrenched workers had approached the CAT through an original application he stated that he same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estoppel against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the Management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period upto 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between

the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board Vs. A. Rajappa reported as 1978 Lab IC 778." The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are, therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Inder Singh, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram, Assistant Administrative Officer of the Management as his witness who produced the muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting backward he worked for the Management 25 days in March, 1988; 22 days in Feb., 1988; 25 days in January, 1988; 27 days in December, 1987; 19 days in September, 1987; August 1987; July, 1987; 6 days in May, 1987; 26 days in April, 1987 i.e. for 201 days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days in 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management, therefore, did not comply with the provisions of Section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3113.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिच्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1089/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/96/93-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1089/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/96/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1089/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Smt. Bimla W/o Daya Ram,
R/o Saidpura,
District Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their order No. L-42012/96/93-IR (DU) dated 24th August, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Smt. Bimla, Casual Worker w.e.f. 1st April, 1988 is legal and justified ? If not, what relief he is entitled to and from what date ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claims in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim beside that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that she had joined service with the Management on daily wages basis in the year 1972/1986 and she served them upon 31st Dec., 1990. The Management, all of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. She was, however, paid small amount as daily wages although she performed the same job, which permanent Class IV employee of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though she was interviewed, but was not adjusted on regular basis. She had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave her the notice nor conveyed the reasons to terminate her services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, she withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in

selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done though the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the management for 240 days, therefore, the termination of his services was violative of the Provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by her own conduct, to prosecute the present petition. It is also claimed that the management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and Others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, her services could not be terminated. She denied that he was a valid contractor or had worked under the contractor till his termination. He rather getting salary from the Management and no contractor intervened in their relationship. Claiming that the along with other retrenched workers had approached the CAT through an original application she stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. She further disputed the application of principle of estoppel against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. She claimed that she had been engaged through employment exchange and the Management has to explain as to how they continued taking service from her along with others, till 31st Dec., 1990. She disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period up to 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. She has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and Others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. She further claimed that she was entitled to know the reasons for his disengagement; and that the Management has the posts of chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post..

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there

existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board Vs. A. Rajappa reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/ or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are, therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Smt. Bimla, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram, Assistant Administrative Officer of the Management as his witness who produced the muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management on any day during 12 months preceding 31st March, 1988. The workman has not produced any evidence to belie this claim of the Management and to prove that she had served the Management for 240 days in 12 months preceding the date of termination of her services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that she was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given her notice showing the reasons for terminating her services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating her services or had paid the wages for the notice period. The Management, therefore, did not comply with the provisions of section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of her services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against her. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिट्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.- II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1095/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/88/93--आईआर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1095/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-09-2007.

[No. L-42012/88/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 1095/2005

Registered on : 21-09-2005

Date of Decision : 14-07-2007

Ram Parshad
S/o Shri Jai Lal Ram
C/o CSSRI, Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R. P. Rana, Advocate

For the Management : Shri R K. Sharma, Advocate

AWARD

Vide their Order No. L-42012/88/93-IR(DU) dated 4th Nov., 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :—

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Ram Parshad, Casual Worker w.e.f. 1st April, 1988 is legal and justified? If not what relief he is entitled to and from what date?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claims in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim besides that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R. C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R. C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the management on daily wages basis in the year 1982 and he served them upto 31st Dec., 1990. The management all, of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employee of the management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of India Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I. D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those

who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the management for 240 days, therefore, the termination of his services was violative of the Provisions of the Act. He has further claimed that during the conciliation proceedings the management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estoppel against him and stated that the workman had served the management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period upto 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and others, the workman had the right of consideration for regularization, having served the management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there

existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as a Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board *Vs.* A. Rajappa reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/ or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Ram Parshad, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram, Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting backward he worked for the Management 23 days in March, 1988; 24 days in Feb., 1988; 17 days in January, 1988; 1 in Dec., 1987; 21 days in January, 1987; 22 days in Oct., 1987; 16½ days in Sept., 1987; 19 days in July, 1987; 9 days in June, i.e. for 175 days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R. C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of Section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिट्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1084/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/52/93-आईआर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1084/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-09-2007.

[No. L-42012/52/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 1084/2005

Registered on : 21-09-2005

Date of Decision : 14-07-2007

Ishwar Singh ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R. P. Rana, Advocate

For the Management : Shri R. K. Sharma, Advocate

AWARD

Vide their Order No. L-42012/52/93-IR(DU) dated 12/17th August, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :—

"Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Ishwar Singh, Casual Worker w.e.f. 1st April, 1988 is legal and justified? If not what relief he is entitled to and from what date?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claim in the form of Claim Statement, reply to the Claim Statement, replication, affidavits, the workman filed his affidavit and the Management filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of the claims.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R. C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R. C. Meena as their witnesses. At the request of the Management they were allowed to amend their Written Petition and permitted to incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and that this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1986 and he served them upto 31st Dec., 1990. The Management, all of a sudden refused the employment to the workman on 1st January, 1991; that the workman had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job which permanent Class IV employees of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating his services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research, is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I. D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise and favouritism in selecting those who related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management, in anticipation, it is further stated by him that the instructions of Government of India, to get the

work through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988. Since the workman had served the Management for 240 days by then, therefore, the termination of his services was violative of the provisions of the Act. Claiming that he had put in 221 days service from 1st April, 1987 to 31st March, 1988 besides weekly or other holidays and if calculated he served the Management for 240 days during that period. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment stating that they are getting the work done through the contractor, therefore, no work was available, for which the workman could engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the Management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the Management after 1st January, 1988. That the Management had destroyed the muster rolls/ attendance rolls, pertaining to the earlier period as a follow up of the decision, taken by the committee on 31st Dec., 1986; that it was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgements 276, it is claimed by the Management that so as to declare a workman, the employee of the Management, the Tribunal should apply the test of whether the worker engaged produced goods or service and the services were so required for carrying on the business and whether the Management had economic control over the workers; that the workman was not the employee of the Management so not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman not to work on 1st January, 1991 nor they employed any other workman after 1st April, 1988. They also denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. Other contentions of the workman were also spurned by them and submitted that the claim of the workman may be dismissed with costs.

In his replication, the workman did not raise any new claim. He admitted that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under a contractor till his termination. He claimed that he is getting salary from the Management and no contractor intervened in that relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application but stated that the same was withdrawn later on. The workman further claimed that he had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estopped against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the Management has to explain as to how they continued taking services from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls or that they can produce the muster rolls for the year 1987 to 1990, as they had destroyed the record only for the period upto 1986. The fact is that the Management has failed to disclose the name of the contractor who had worked for them and for whom the workman had worked. The claim made is, therefore, without any basis. The Management has further claimed that in view of the judgement of Hon'ble Supreme Courts reported as 1992(4) SLR 770, with title State of Haryana Vs. Piara Singh and others, the workman is required to prove, the right of consideration for regularization, having served the Management for a long time; and that the Management violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there

existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner and not work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an "industry."

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon reference, as is desired by the Appropriate Government, and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board Vs. A. Rajappa, reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, educational institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an Industry. In their own pleadings the Management admitted that they were engaged in research work; and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence in the face of the Judgement referred to above. The preliminary objections raised by the Management are, therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Ishwar Singh, casual worker w.e.f. 1st of April, 1988, and if so whether their action was legal and justified. If not to what relief the workman is entitled to and from what date.

The Management, in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and since 1st of April, 1988, the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of December, 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of December, 1987. The workman produced Shri Tej Ram, Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting backward he worked for the Management 27 days in March, 1988, 25 days in February 1988, 23 days in January, 1988, 22 days in December 1987, 24 days in October 1987, 25 days in September 1987, 26 days in August, 1987, 27 days in July, 1987, 19 days in May, 1987, 27 days in April, 1987 i.e. for two hundered and forty five days. Thus the employee of the Management has belied the claim of the Management that the workman had not worked for them for 240 days in 12 months preceding the date of his disengagement on 1st of April, 1988, on the day, according to the Management, they had shifted to the arrangement of getting labour work done through the contractor. The workman, therefore, was entitled to the protection of Section 25-F of the Act, on that day, before he could be shown the door by the Management.

Mr. R. C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services, the Management had not given him notice, showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management, therefore, did not comply with the provisions of Section 25-F of the Act. The termination of services of the workman was, therefore, bad in law and the same is quashed. Since the workman has shown that he had been taken in service, by the Management, on the sponsorship of the Employment Exchange, therefore, his retirement was not backdoor entry. He is, therefore, treated to be in service all through this period as if there was no order of his termination passed by the Management.

The question that now requires consideration is as to what relief the workman is entitled to and from which date. After going through the pleading of the parties, I am of the opinion that the Management has acted, in this case, in most irresponsible manner. They placed wrong facts before Tribunal and thereby tried to mislead it. They claimed that the workman had worked with them only upto 1st of January, 1988; and that record pertaining to that period stand destroyed. But their Administrative Officer, who appeared as witness, placed on record the statement showing that the workman had served the Management upto 31st of March, 1988. They contested the claim of the workman without any justification. The workman has suffered because of the Management. Therefore he is entitled to the back wages.

The workman has claimed that he has remained mostly without job after the termination of his services since 1990 and only at time he would get work to do. As against to it there has come no evidence on record to show that the workman remained gainfully employed all through this period. However, it cannot be denied that he must have worked to meet the expenses of his household, but may not have earned that much, as he would have earned but for his termination from service. In the circumstances I hold that the workman is entitled to fifty per cent of the back wages he would have got, but for the termination of his services. The Management is directed to take back the workman in service, if need be, by creating the post for this purpose if not otherwise in eligible under rules and also pay him the back wages within three months from the date this award becomes enforceable. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिट्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ के पंचाट (संदर्भ सं. 1096/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/85/93-आईआर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1096/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/85/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1096/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Ramesh S/o Shri Kanta,
R/o Village Saidoura,
District Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their Order No. L-42012/85/93-IR(DU) dated 4th November, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :—

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Ramesh, Ex-Daily paid labour w.e.f. 1st April, 1988 is legal and justified? If not what relief he is entitled to and from what date?"

The notice of the reference was given to the parties who appeared through their Counsel and filed their respective claim in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The Management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim besides that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as

a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1983 and he served them upto 31st Dec., 1990. The Management, all of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employees of the management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the management for 240 days, therefore, the termination of his services was violative of the Provisions of the Act. He has further claimed that during the conciliation proceedings the management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls peritaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and Others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of

principle of estopped against him and stated that the workman had served the management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period up to 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and Others, the workman had the right of consideration for regularization, having served the management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribuion of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board versus A Rajappa reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/ or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Ramesh, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting

backward he worked for the Management 23 days in March, 1988, 18 ½ days in Feb., 1988; 24 days in January, 1988; 16 days in Nov., 1987; 19½ days in Oct, 1987; 18 days in Sept., 1987; 20 days in August, 1987; 17 days in July, 1987; 8 days in June; 22 days in May 87, 6 days in April, 1987 i.e. for 201 days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिट्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1092/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/116/93-आईआर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1092/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/116/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1092/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Mai Chand S/o Shri Ishwar Singh
R/o Village Kachhwa,
District Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their Order No. L-42012/116/93-IR(D.U.) dated 30th Sep., 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :—

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Mai Chand, Casual Worker w.e.f. 31st Dec., 1987 is legal and justified ? If not what relief he is entitled to and from what date?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claim in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim beside that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written

Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1982 and he served them upon 31st Dec., 1990. The management all, of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employee of the management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of India Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the Management for 240 days, therefore, the termination of his services was violative of the provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the Management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the Management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgement, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estopped against him and stated that the workman had served the management during his youth and now they cannot ignore that fact. He claimed that he had been

engaged through employment exchange and the Management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1987. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period upto 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between the parties and the Management had introduced the contractual system w.e.f. 31st Dec., 1987, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribuion of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board Vs. A. Rajappa reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their persuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are, therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Mai Chand, casual worker w.e.f. 31st Dec., 1987 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram, Assistant Administrative Officer of the Management as his witness who produced the muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had not served the Management on any day during 12 months preceding 31st Dec., 1987. The workman has not produced any evidence to belie the claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st Jan., 1988 as is claimed

by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management, therefore, did not comply with the provisions of Section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 31st January, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिट्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1087/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/93/1993-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1087/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/93/1993-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1087/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Suresh Pal S/o Shri Bhagat Ram,
R/o V & PO Pundrak,
District Karnal (Haryana) ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their order No. L-42012/93/1993-IR (DU) dated 24th August, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Suresh Pal, Casual Worker w.e.f. 1st April, 1988 is legal and justified ? If not, what relief he is entitled to and from what date ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claims in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim besides that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages basis in the year 1984 and he served them upto 31st Dec., 1990. The Management all of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employees of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the management for 240 days, therefore, the termination of his services was violative of the provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and Others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estopped against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the Management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per

their own saying they had destroyed the record only for the period upto 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and Others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board versus A Rajappa reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/ or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Suresh Pal, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram, Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management upto March, 1988. Counting backward he worked for the Management 24 days in September, 1987, 9 days in August, 1987, 19 days in May, 1987, 9 days in July, 1987, 5 days in August, 1987, 24 days in September, 1987 i.e. for 81 days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed

by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of Section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3119.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिच्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1093/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/86/93-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1093/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/86/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1093/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Ram Chander S/o Shri Munshi Ram,
R/o Village Bijida, Roram,
District Karnal ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their order No. L-42012/86/93-IR (D.U.) dated 31st October, 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Ram Chander, Casual Worker w.e.f. 1st April, 1988 is legal and justified ? If not, what relief he is entitled to and from what date ?"

The notice of the reference was given to the parties who appeared through their counsel and filed their respective claim in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim besides that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness whereas the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages in the year 1982 and he served them upto 31st Dec., 1990. The Management, all of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the

Management on being sponsored by the employment exchange. He was, however, paid small amount as daily wages although he performed the same job, which permanent Class IV employees of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favoritism in selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done though the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the Management for 240 days, therefore, the termination of his services was violative of the Provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the Management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He rather getting salary from the Management and no contractor intervened in their relationship. Claiming that the along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estopped against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the Management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period up to 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the

judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board Vs. A Rajappa reported as 1978 Lab IC 778." The seven judges bench ruled that "Industry" means an establishment where there is (i) a systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/ or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their persuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Ram Chander, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram Assistant Administrative Officer of the Management as his witness who produced the Muster Roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had served the Management up to March, 1988. Counting backward he worked for the Management 82 days in the year .. 32; 22 days in March, 1988; 18 days in Feb, 1988; 27 days in January, 1988; 10 days, in Dec., 1987; 25 days in November, 1987; 22 days in Sep, 1987; 26 days in July, 87; 21 days in June, 24 days in May, 87 i.e. for 199. days in total. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल सोईल सेलिनिटी रिसर्च इंस्टिच्यूट, करनाल के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं II, चण्डीगढ़ के पंचाट (संदर्भ सं. 1091/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-42012/114/93-आई आर (डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3120.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1091/2005) of Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute, Karnal and their workman, which was received by the Central Government on 27-9-2007.

[No. L-42012/114/93-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1091/2005

Registered on : 21-9-2005

Date of Decision : 14-7-2007

Sham Singh S/o Shri Ram Singh,
R/o House No. 879,
Chandigarh ... Petitioner

Versus

The Director,
CSSRI, Karnal ... Respondent

APPEARANCE

For the Workman : Shri R.P. Rana, Advocate

For the Management : Shri R.K. Sharma, Advocate

AWARD

Vide their order No. L-42012/114/93-IR (DU) dated 30th Sept. 1994, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

> "Whether the action of the Management of Central Soil Salinity Research Institute, Karnal in terminating the services of Shri Sham Singh, Casual Worker w.e.f. 31st Dec., 1987 is legal and justified ? If not, what relief he is entitled to and from what date ?"

The notice of the reference was given to the parties who appeared through their Counsel and filed their respective claims in the form of Claim Statement, reply to the Claim Statement, replication, the workman's affidavit. The Management has also filed the affidavit of Shri Rounak Ram, their Assistant Administrative Officer in support of their claim besides that of Shri Tej Ram, Assistant Administrative Officer.

It is on record that before the proceedings of the case could advance the Management filed an application for permission to amend their Written Statement. They also filed affidavit of Shri R.C. Meena, Senior Administrative Officer in support of their claim. The workman appeared as a witness the Management examined S/Shri Tej Ram and R.C. Meena as their witnesses. At the request of the Management they were allowed to amend their Written Petition and incorporate the plea that since the Management is not an Industry, the present reference is not maintainable and this Tribunal has no jurisdiction to adjudicate upon the said reference.

The claim of the workman is that he had joined service with the Management on daily wages in the year 1982 and he served them upto 31st Dec., 1990. The Management all, of a sudden refused the employment to the workman on 1st January, 1991; that he had joined the service with the Management on being sponsored by the employment exchange. He was, however, paid small amount as daily

wages although he performed the same job, which permanent Class IV employee of the Management performed as Peon, Beldar and Chowkidar. He repeatedly represented for being regularized in service. Though he was interviewed, but was not adjusted on regular basis. He had served the Management for 240 days in more than one year especially in the year 1988-89 and 1990. Before terminating the services, the Management neither gave him the notice nor conveyed the reasons to terminate his services; that the workman along with co-workers approached the CAT, but since there was a question of disputed facts, therefore, he withdrew the petition. The workman claims the relief on the ground that the Management being a limb of Indian Council of Agriculture Research is an Industry and the workman having served them for 240 days in a year deserves his regularization and could not be terminated without following the provisions of I.D. Act, 1947 to be called "Act" in short. The Management acted in an arbitrary manner with colorable exercise of their powers and favouritism in selecting those who were related to the officers of the Management, ignoring the claim of those who had joined the service through the Employment Exchange. Rebutting the claim of the Management in anticipation, it is further stated by him that the instructions of Government of India, to get the work done through the contractor, were not applicable to the workman since the same were effective from 1st April, 1988 and since the workman had served the Management for 240 days, therefore, the termination of his services was violative of the provisions of the Act. He has further claimed that during the conciliation proceedings the Management maintained a stubborn attitude and did not offer an employment to the workman stating that they get work done through the contractor, therefore, no work was available for which the workman can be engaged.

The Management in their reply has claimed that from 1st April, 1988, the Management had introduced a contractual system for getting the work done and obtained certificate of registration, therefore, there was no question of engaging the workman for any labour work. They have further claimed that the petition is time barred having no cause of action or locus standi. It is also claimed by them that the workman is estopped, by his own conduct, to prosecute the present petition. It is also claimed that the Management is not an Industry, therefore, also the reference is bad and this Tribunal does not possess the jurisdiction to decide the issue.

On merits it is stated by them that the workman had never worked for the Management after 1st January, 1988. The Management has destroyed the muster rolls/ attendance rolls pertaining to the earlier period as a follow up the decision taken by the committee on 31st Dec., 1986. It was the contractor who enjoyed control over his labour and the Management did not have any direct concern with them. Relying upon the judgement of Punjab and Haryana High Court, in the case of National Fertilizer Ltd. Vs. Presiding Officer and others, reported as 1990(3) Recent Judgements, 276, it is claimed by the Management that, so as to declare a workman as the employee of the Management the Tribunal should apply the test of whether the worker engaged produced goods or services and the services were so required for carrying on the business; and whether the Management had economic control over the workers; that the workman was not the employee of the Management so is not entitled to any relief; that the Management though an autonomous body, but followed the rules of Government of India and they were bound by the same so as to make appointments. It is on record that the workman was called for an interview, but was not selected having not come within the criteria fixed. They denied that the workman had served in the year 1989 and 1990 for 240 days. They further denied that they had terminated the services of the workman. Since the work had been allotted to the contractors, so it was his duty to engage the labour. They further denied that the Management had ever asked the workman on 1st January, 1991 that they have no work for him nor they employed any other workman after 1st April, 1988. They have further denied that they had terminated the services of the workman or had employed workmen after 1st April, 1988. They further denied the other contentions of the workman and submitted that the claim of the workman may be dismissed with costs.

In his replication the workman did not raise any new claim. He claimed that the workman was working with the Management till the introduction of contractual system and by then he had put in more than 240 days service, therefore, his services could not be terminated. He denied that he was a valid contractor or had worked under the contractor till his termination. He was rather getting salary from the Management and no contractor intervened in their relationship. Claiming that he along with other retrenched workers had approached the CAT through an original application he stated that the same was withdrawn later on. The workman had vigorously followed his case so there was no question of his claim having been barred by his limitation. He further disputed the application of principle of estopped against him and stated that the workman had served the Management during his youth and now they cannot ignore that fact. He claimed that he had been engaged through employment exchange and the Management has to explain as to how they continued taking service from him along with others, till 31st Dec., 1990. He disputed the claim of the Management that they did not possess the muster rolls from the year 1987 to 1990. As per their own saying they had destroyed the record only for the period upto 1986. The fact that the Management has failed to disclose the name of the contractor who had worked for them. He has further claimed that in view of the judgement of Hon'ble Supreme Court reported as 1992(4) SLR 770 with title State of Haryana Vs. Piara Singh and

others, the workman had the right of consideration for regularization, having served the Management for a long time. The Management, therefore, violated the provisions of the Act and disengaged the services of those who had served the Management for 18 years and above. He further claimed that he was entitled to know the reasons for his disengagement; and that the Management has the posts of Chowkidars, Peons, Sweepers and etc. in Class IV category and the workman is ready to work on any other post.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The Management has raised a number of preliminary objections to the maintainability of the reference. It is their claim that the claim made is barred by limitation; that the workman has no cause of action to maintain the same; that the workman is estopped to raise the claim by his own conduct; that workman has no locus standi to file the present claim. They have further claimed that since there existed no relationship of employer and employee between the parties and the management had introduced the contractual system w.e.f. 1st of April, 1988, therefore, the dispute is not maintainable. The last preliminary objection raised by them is that the Management is not an industry since it carries on the activity of research in a systematic manner. It is not engaged in the work of trade and business nor it is engaged in the production or distribution of services to satisfy the human wants and wishes. According to them they are engaged in the research work so are not an industry.

I have considered the preliminary objections raised. After going through the record of the file I feel that the Management has not seriously contested the preliminary objections. They have not produced any evidence to show that the claim of the workman is barred by limitation or he has no cause of action to maintain the reference. To me the preliminary objections are misplaced as the Tribunal is adjudicating upon this reference as is desired by the Appropriate Government and not on the asking of the workman. Whether there existed the relationship of employee and employer between the parties or whether the workman has the cause of action to maintain his claim, are the questions which are interwoven with the question of termination of services of the workman. So shall get decided automatically by the answer to the reference.

As regards the question, whether the Management is an industry or not, I feel the plea taken by the Management is without any merit. The answer to the plea of the Management is contained in the famous judgement of Hon'ble Supreme Court of India in the case "Bangalore Water Supply and Sewerage Board versus A Rajappa reported as 1978 Lab IC 778". The seven judges bench ruled that "Industry" means an establishment where there is a (i) systematic activity, (ii) organized by the co-operation between employer and employee, (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes. Absence of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. According to their Lordships Professions, clubs, education institutions, co-operatives, research institutes, charitable projects and other kindred adventures, if fulfilled the triple tests cannot be exempted from the scope of 'Industry'. Applying these tests it cannot be said that the Management is not an industry. In their own pleadings the Management admitted that they were engaged in research work and that they followed their pursuit with the help of Research scholars and the labourers. Their stand that they are not engaged in commercial activity is of no consequence, in the face of the Judgement referred to above. The preliminary objections raised by the Management are therefore, of no merit and are rejected.

The question which now requires consideration is whether the Management of Central Soil Salinity Research Institute, Karnal had terminated the services of Shri Sham Singh, casual worker w.e.f. 1st of April, 1988 and if so whether their action was legal and justified. If not what relief the workman is entitled to and from what date. The Management in reply to the claim of the workman stated that the workman had not worked with the Management after 1st of January, 1988 and after 1st of April, 1988 the labour work used to be given to different contractors. They made evasive reply to the claim of the workman that he had continuously worked for the Management upto 31st of Dec., 1990. They only claimed that the workman had not worked for them after 1st of January, 1988. What about the earlier period till 31st of Dec., 1987. The workman produced Shri Tej Ram Assistant Administrative Officer of the Management as his witness who produced the Muster roll and other record and stated that as per record the workman had worked for the Management on days as shown in statement exhibit W1. As per this document the workman had not served the Management on any day during 12 months preceding 31st March, 1988. The workman has not produced any evidence to belie this claim of the Management and to prove that she had served the Management for 240 days 12 months preceding the date of termination of her services on 1st April, 1988 as is claimed by him in his pleadings. The workman has not produced any evidence to belie this claim of the Management and to prove that he had served the Management for 240 days 12 months preceding the date of termination of his services on 1st April, 1988 as is claimed by him in his pleadings. The workman has thus failed to show that he was entitled to the protection as envisaged by Section 25-F of the Act.

Mr. R.C. Meena who appeared as witness for the Management in his statement admitted that the workman was not given notice before changing his service conditions. The Management made evasive reply to the claim of the workman that before terminating his services

the Management had not given him notice showing the reasons for terminating his services. There is also no evidence on record to show that the Management had paid retrenchment compensation to the workman before terminating his services or had paid the wages for the notice period. The Management therefore, did not comply with the provisions of Section 25-F of the Act but they were not supposed to comply with the same for the reason that the workman had not worked for the Management for 240 days before the termination of his services w.e.f. 1st April, 1988. The disengagement of the workman was, therefore, legal and justified. The workman is entitled to no relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब व सिन्ध बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 869/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/233/95-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 869/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank, and their workman, which was received by the Central Government on 27-9-2007.

[No. L-12012/233/95-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri KULDIP SINGH, Presiding Officer

Case I.D. No. 869/2005

Registered on : 9-9-2005

Date of Order : 14-8-2007

Gurbax Singh S/o Shri Kapoor Singh,
C/o Shri Mukhtiar Singh,
Street No. 7, Shiv Colony,
Kaithal Road, Karnal ... Petitioner

Versus

Punjab and Sind Bank,
Through the Manager,
Punjab and Sind Bank,
Assandh, District Karnal ... Respondent

APPEARANCE

For the Workman : In person

For the Management : Shri J. S. Sethi, Advocate

AWARD

Vide their order No. L-12012/233/95-IR (B-II) dated 7th January, 1997, Ministry of Labour, Government of India referred the following dispute for the adjudication of this Tribunal :

"whether the action of the Management of Punjab and Sind Bank in terminating the services of Shri Gurbax Singh ex-daily wager, peon w.e.f. 17th October, 1993 is just, fair and legal ? If not, to what relief the said workman entitled ?"

The notice of the reference was given to the parties Directing them to put up their respective cases. In response thereto, the workman filed his Claim Petition and the Management reply thereto. The workman filed his affidavit supporting his claim. He also placed on record the copies of the documents. The Management filed the affidavit of Nasib Singh Manager of the Management in support of their claim. They also submitted photocopies of the record duly certified as detailed in their letter dated 24th March, 2006. The workman appeared as a witness and the management produced Messrs. Nasib Singh and Narinder Pal Jain as their witnesses. The parties also addressed the arguments in support of their pleadings.

The claim of the workman is that he had joined service with the Management on 24th August, 1992 as Peon on daily wages basis, in compliance to the appointment letter dated 22nd August, 1992. He continuously worked for the Management for more than 240 days and his services were terminated on 17th October, 1993 without following the procedure as laid down in Sections 25-F, G and H of the Industrial Disputes Act, 1947, in short "Act". The Management did not issue him notice indicating the reasons for terminating his services nor they paid him wages for the notice period. They also did not pay him the retrenchment compensation. It is further claimed by him that the management terminated his services but retained Raunki Ram, who was junior to him and thereby violated Section 25-G of the Act. They also made fresh appointments without providing opportunity to the workman and thus further violated the provisions of Sections 25-G and H of the Act. They adopted unfair labour practice for terminating the services as the post on which he was working still exits. They also made fresh recruitments and retained his juniors in service.

The Management has opposed the claim of the workman stating that the workman was engaged as a Casual labour during 1992, 1993 but intermittently as and when required basis and he used to be paid wages after every 5, 6 days. Neither he was appointed as a Peon. He had also not given appointment or relieving orders. His attendance was also not marked nor he served the Management for 240 days continuosly. They denied that the services of the workman were terminated on 17th October, 1993. Since the services of the workman were no more required therefore, he was not further engaged. They further denied that the Management had retained Rounaki Ram, junior of the workman and since the engagement of the workman was as a casual labour, he did not acquire a right to hold the post as the engagement of the workman was not in accordance with the recruitment process. His engagement was from the labour market so there was no question of maintaining his seniority list. They prayed that the claim of the workman be rejected since he is not entitled to any relief.

In support of his claim the workman came in the witness box and proved his affidavit W-1 and documents W-2 to W-4. He admitted that he had not made any application for appointment as peon nor the said post was advertised. Also no interview for that post was conducted, but he was appointed on daily wages. He had been given the appointment letter exhibit W-2. He admitted that he was paid wages at the rate of Rs. 30 per day, as labour charges and he had never objected that he is being paid as labour charges. He claimed that his juniors Kulwant and Raunki Ram were retained by the Management.

As against to it the management produced Nasib Singh as their witness who admitted the correctness of documents W-2 and W-3, saying that those were issued by the Management. He admitted that the workman was appointment on 24th August, 1992 and he worked upto 26th Feb., 1993. Again he worked from 2nd January., 1993 to 14th Sep., 1993. He was not paid wages for the holidays and Sundays. He was paid wages to vouchers against the Head "General Charges". He admitted that no notice of termination of service was given to the workman nor he was paid retrenchment compensation as the same were not required to be paid. He claimed that Rounaki Ram was not appointed after the termination of services of the workman nor he is working with the Bank in Assandh Branch. The Management produced another witness Narinder Pal Jain who also made a similar statement. He showed his inability to identify the signatures of the officer who signed W-2 and W-3. He also failed to identify the signatures on documents W-4 and W-5 as the original was not before him. He admitted that if the matter is subjudice in that case, the record is not destroyed. He further stated that there is no peon working in his Branch and the work is being done by guard-cum-Peon who is engaged on regular basis.

The perusal of the documents exhibits W-2 and W-3, were not read in connection show that on the directions of Regional Manager, Shri Gurbax Singh was appointed as temporary peon by the manager Assandh (Karnal) Branch on 22nd August, 1992, on daily wages basis, who resumed his duties on the same day. W-3 shows that the workman continuously worked as temporary peon upto 8th October, 1993. Document W-4 read with photo-stat copies of S.B. Account No. 5504 and copies of vouchers placed on record show that the workman was paid wages as General Charges, for six days a week from 24th August, 1992 to 26th Feb., 1993 and as per the copies of the pass book an amount of Rs. 180 was transferred to his account almost every week till 26th July, 1993. If we connect this piece of evidence with the statement of Nasib Singh witness of the Management it becomes clear that the workman had served the Management from 24th August, 1992 upto Sep., 1993. It is thus proved that the workman had served the Management for 240 days 12 months preceding the date of his disengagement. MW Nasib Singh admitted that before his disengagement the Management had not issued any notice to the workman nor he was paid retrenchment compensation or wages for the notice period. They, therefore, did not follow the provisions of Section 25-F of the Act before terminating his services.

The claim of the Management is that since the engagement of the workman was as a daily wager, as and when need basis, there was no question of his disengagement rather he got disengaged every day the close of the day and was reappointed on subsequent occasion. It is also claimed by them that since the engagement of the workman was not done in accordance with the rules and by following the procedure meant for recruitment of sub-staff in the Banks, therefore, his engagement was back door entry so he was not entitled to the relief of regularization. In my opinion the two grounds taken by them are not helpful to them for the reasons that in the reference the Tribunal is required to adjudicate upon that a workman is workman whether the workman was engaged by the Management and whether the disengaged him and whether while disengaging him they followed the provisions of the Act. It is now well settled whether the workman is a daily wager, regular, temporary or casual provided he continuously served the Management for 240 days 12 months preceding the date of his engagement. He then comes under the umbrella of Section 25-F of the Act. In this case the workman is successful to show that he had served the Management continuously for 240 days before his disengagement. He has further succeeded in showing that the Management did not follow the provisions of Section 25-F of the Act before the termination of his services. Therefore, his disengagement was in violation of provisions of Section 25-F of the Act. The termination is, therefore, quashed.

The workman has also raised the violation of Section 25-G and H of the Act. There is no reference about these violations, therefore, the Tribunal cannot go into this aspect.

Since the disengagement of the workman has been held to be bad in law it is now be seen, as to what relief the workman is entitled to. After the judgement of bench of five judges of the Hon'ble Supreme Court, in the case of Secretary State of Karnataka and others Vs. Uma Devi reported as 2006 (109) FLR 8261, it is settled that any appointment made without following procedure and rules meant for recruitment, is violative of Articles 14 and 16 of the Indian Constitution. Such an appointment is no appointment in the eyes of laws. It has been found that the engagement of the workman was not in accordance with the rules and procedure laid, therefore, he has no right to the post on which he worked and thus he cannot be reinstated thereon. Since he had served the Management for 240 days in 12 months preceding the date of termination of his services, therefore, he earned the protection under Section 25-F of the Act and was entitled to retrenchment compensation besides wages for the notice period. Admittedly the notice was not given to the workman before terminating his services. The Management has admitted that the notice was not given to the workman nor he was paid wages for the notice period and the retrenchment compensation. Their claim is that the workman was a daily wager, therefore, the compensation was not required to be paid to him. This assumption of the Management was wrong. In the circumstances the workman is entitled to retrenchment compensation, the wages for the notice period, as his disengagement was done abruptly. He is also entitled to the interest on the said amount besides compensation for prosecuting his case for mental, economical physical suffering he has undergone for about 14 years. In my opinion he is entitled to a compensation of Rs. 1.5 lacs under all these heads. The Management is directed to pay this amount to the workman as one time compensation within 3 months from the date this award becomes enforceable. In case of their failure the workman shall be entitled to interest on this amount at the rate of 9% p.a. from the day next on which the period of three months expires.

The reference is answered in these terms. Let a copy of this award be sent to the appropriate govt. for necessary action and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-2 चण्डीगढ़ के पंचाट (संदर्भ सं. 500/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/293/94-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 500/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 27-9-2007.

[No. L-12012/293/94-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 500/2005

Registered on : 22-8-2005

Date of Decision : 17-5-2007

Pawan Kumar Bhardwaj,
S/o Sh. Paritam Chand C/o General Secretary,
Punjab National Bank Staff Union,
Central Office, 47,
Nehru Nagar (Model Town),
Ludhiana

... Petitioner

Versus

Punjab National Bank,
Staff Union,
Nehru Nagar (Model Town),
Ludhiana

... Respondent

APPEARANCE

For the Workman : Mr. Sameer Sachdeva, Advocate

For the Management : Mr. N. K. Zakhmi, Advocate

AWARD

The Government of India vide their order No. L-12012/293/94-IR (B-II) dated 12th January, 1995 desired to know :

"Whether the action of the Management of PNB, Ludhiana in imposing the penalty of stoppage of two increments with cumulative effect on Shri Pawan Kumar Bhardwaj, Clerk-cum-Cashier vide their order

dated 16th May, 1992 is legal and justified ? If not , to what relief is the said workman entitled ?"

On getting the notice from this Tribunal the parties appeared. The workman filed his Claim Statement. The Management filed their Written Statement and the workman replication thereto. The workman filed his affidavit whereas the Management filed the affidavit of Sh. Gurinder Singh, their Manager. They also placed on record the photocopies of the inquiry proceedings. On behalf of the workman the arguments were submitted by Sh. H. C. Arora. The case was being listed for the evidence of the workman when it was brought to the notice of the Tribunal that punishment to the workman has been awarded after holding a domestic inquiry and the workman has challenged the fairness of the said inquiry. It was in these circumstances the case was directed to be listed for arguments on fairness of inquiry, instead for the evidence of the workman. As stated earlier the workman filed his Written Arguments dated 14th Nov., 2003 whereas the Management has addressed the arguments orally. Both the parties have also referred to the law during the course of argument.

Stated in brief the claim of the workman is that he is working with the Management; that he was served with a charge sheet on 4th Feb., 1998, by the Senior Manager, PNB, Malerkotla. The charge against him was that on 18th January, 1988 while he was working on the cash receipts, and received Rs. 17,000 against CC account no. 610 of Messrs R. S. Steel Industries, but the workman stamped the Receipt voucher in a manner that the amount could be read only as 7,000. Consequently in the receipt long book also the workman entered of Rs. 7,000 only and thereby retained Rs. 10,000 in connivance with Sh. J. S. Jyoti, Head Cashier. On 19th January, 1988 when the fraud was detected the workman, alongwith Mr. Jyoti tampered with the record of the Bank, therefore, he committed gross misconduct as defined by Clause 19.5(J) of the Bipartite Settlement dated 19th October, 1996. That he was given three days time to submit his reply to the charge sheet, which he filed on 7th March, 1988. However the Disciplinary Authority initiated the inquiry proceedings against him and appointed an inquiry officer; that the workman was, at that time member of the Central Committee of the PNB staff union which was spearheading agitation against the Management; that the workman received threats from the officer of the Management of victimization and the charge framed against him was the result of that.

The workman has further claimed that in the inquiry it was found that the workman had no malafide intentions, at the time of issuing cash receipt. As per the inquiry report the mischief started when excess amount of Rs. 10,000 was found, after tallying the cash figures. It was at that time the workman connived with the J.S. Jayoti.

The workman has alleged that the charge sheet was served upon him in violation of the circulars issued by the Management from time to time. He was not provided with the finding of the inquiry officer. The Disciplinary Authority accepted the finding of the inquiry mindlessly and issued notice to the workman telling that the Disciplinary Authority has concurred with the finding of the inquiry officer and the charge against the workman has been proved thus that exhibited the mind of the Disciplinary Authority that he had made up his mind to punish the workman and the tentative punishment proposed was only an eye wash; that one notice was issued by the Regional Manager, whereas the second notice was issued by the Chief Manager although as per the circulars of the Disciplinary Authority could not be changed pending inquiry. The workman has also alleged that the finding of the inquiry was totally baseless and the same was arrived at on the basis of inadmissible evidence. The inquiry officer did not consider the points raised by the workman. The punishment awarded was grossly disproportionate to the misconduct alleged against the workman. Even otherwise the punishment awarded was not sanctioned by the provision of the bipartite settlement. The contentions raised by the workman were also not considered deeply. The Management further violated the provisions of law by entrusting the inquiry of the same occurrence to two different inquiry officers to one against the workman and the second against J.S. Jyoti which prejudiced the workman. He has prayed for setting aside the order of punishment awarded to the workman and for the grant of all consequential benefits along with interest and cost of litigation. The claim of the workman has been opposed by the Management. According to them the workman was charge sheeted for having committed misconduct while working with the Management. They have alleged that on 18th January, 1988 the workman received Rs. 17,000 from Messrs R. S. Steel Industries for depositing in that CC Account No., 610, but he with malafide intentions/stamped the cash receipt in such a manner that it would read only as 7,000 and consequently showed only the receipt of Rs. 7,000 in the Receipt Long Book however, when in the evening, the cash receipt was tallied, an amount of Rs. 10,000 was found excess which he retained with him in connivance with Sh. J. S. Jayoti, Head Cashier. On 19th January, 1988 the workman alongwith Sh. Jayoti tempered with the record. In reply to the charge sheet the workman admitted that on 18th January, 1988 he had received Rs. 17,000 from Messrs. R. S. Steel Industries and issued the receipt for the said amount, but due to rush of work he made the entry in the cash receipt for an amount of Rs. 7,000 instead of 17,000. He then claimed that the mistake was rectified on the same day; that the Disciplinary Authority, Regional Manager, Bhatinda did not feel satisfied with the explanation given by the workman and an inquiry was instituted against him; that in the inquiry all charges were proved against the workman except the allegation that the workman had stamped the cash receipt with malafide intention so as to look the receipt for an amount

of Rs. 7,000. The Disciplinary Authority agreed with the Inquiry Officer and proposed the stoppage of two increments with cumulative effect against the workman. After giving in personal hearing the workman the Disciplinary Authority confirmed the proposed punishment on 16th May, 1992. The appeal made by the workman was also rejected. Contesting the claim of the workman, it is stated by the Management that the workman was governed by Bipartite settlements; that as per the circulars of the Management every incumbent incharge of the Branch of the Bank was invested with the powers of issuing charge sheet to the staff working under them and the Regional Manager became the Disciplinary Authority whereas the Chief Manager were made the Disciplinary Authorities in the very large Branches. In this case it is the claim of the Management that the workman was given full opportunity to defend himself and the inquiry was conducted in accordance with the Bipartite Settlement and provisions of law. They denied that the punishment was awarded to the workman illegally or that the charges framed against the workman were frivolous. They also denied that the charge sheet was served upon the workman, since he was the member of PNB Staff Union. It is also stated by them that the Management had given full opportunity to the workman during the Inquiry proceedings and he was duly represented by a defence representative and that the workman had cross examined the witnesses of the Management and also produced evidence in his defence. Admitting that the charge sheet was served upon the workman by a Senior Manager, they stated that the charge was served in accordance with circular no. 1012 dated 13th April, 1987 with the prior approval of the Disciplinary Authority. The workman was given show cause notice, the copy of the interim orders in terms of Bipartite settlement. He was also given full opportunity to defend him and made full submissions which he did, but he could not satisfy the Disciplinary Authority therefore, the punishment proposed was confirmed and upheld in appeal. They have claimed that Regional Manager, Bhatinda, was the Disciplinary Authority who had appointed the inquiry officer but subsequently due to the upgradation of the Branch, the Chief Manager, the Disciplinary Authority became therefore the show cause and final notice was issued to the workman by the Chief Manager. They denied that the workman was served with two chrge sheets or that the findings of the inquiry was based on inadmissible evidence. According to them the charges were proved against the workman and that the Management had duly considered the submissions made by the workman in the inquiry and at the appellate stage. There was no prejudice caused to the workman. They have also claimed that the punishment awarded is not harsh and disproportionate to the misconduct proved against the workman. The inquiry conducted was fair and proper. They have taken preliminary objections that the workman cannot appear through Counsel without their consent.

The workman filed the rejoinder/replication by which he claimed that since the Management allowed the workman to appear through Counsel in the proceedings, therefore, they cannot now withdraw the same. He reiterated that the workman had not committed any misconduct and the inquiry initiated against him was the result of revengeful attitude of the Management for his Trade Union activities as he was spearheading the agitation under the banner of PNB Staff Union, in his capacity as members of the committee. He recounted the objections raised by him against the inquiry report and the punishment awarded in the Claim Statement and submitted that the workman was not given opportunity to defend himself; that nobody other than the competent Disciplinary Authority could initiate the same; and that the incharge of the Branch could issue charge sheet against any workman only in emergent situations and not otherwise. According to him the circular no. 1012 was ultra vires to the provisions of Bipartite Settlement; that the Disciplinary Authority did not apply his mind to approach the inquiry report. He denied the contentions taken by the Management in the Written Statement and submitted that the workman was prejudiced since the evidence against him was recorded by two inquiry officers. Thus the consideration of the Written Statement was bad. So was the finding of the Inquiry Officer. He prayed that the penalty imposed be set aside and he may be given the relief as claimed.

As stated earlier the workman supported his claim by his affidavit. The Management supported their claim with the affidavit of their witneses Gurpinder Singh, Senior Manager, who was the presenting officer of the Management during the inquiry proceedings.

The Tribunal, at the stage, is required to examine whether the inquiry held against the workman was fair and proper. This also means whether the punishment awarded to the workman was proper or disproportionate to the misconduct alleged against the workman. After going through the inquiry proceedings and the pleadings of the parties, I am of the opinion that the inquiry held against the workman was fair and proper. The workman was served with the charge sheet and he was given opportunity to give reply to the charge sheet. The Disciplinary Authority appointed an inquiry officer, who entered upon the inquiry proceedings a notice of which was given to the workman. It is also on record that the workman was represented by defence representative during the inquiry proceedings. The perusal of the statements of the witness, recorded during the inquiry, show that the inquiry was contested seriously and the representative of the workman put searching question to the witnesses of the Management and the witnesses replied. The workman has failed to point out any occasion when the inquiry officer did not conduct himself properly and the act which caused prejudice to him. the workman as well as the representative signed all the inquiry proceedings. Therefore, the workman has failed to point

out any lapse on the part of inquiry officer to show that the inquiry conducted was not fair and proper.

In his Written Arguments, a copy of which was provided to the Management the workman has contented that since the Management did not produce representative of Messrs. R. S. Steel Industries, whose transaction of deposit of money became the cause for the inquiry against the workman was examined in the inquiry, therefore, the inquiry conducted was defective. In his support he has cited the judgement of Supreme Court in the case of Sushil Kumar Verma Vs. Union of India reported as "judgment today 2001 (supplementary one) SC 537". After going through the judgement I am of the opinion the facts in that case were distinct and different. The question of examining a representative of the concerned customer could arise only when the parties disputed the amount deposited, the amount shown in the cash receipt as is claimed by the Management. In his reply the workman did not contest the claim of the Management that actually Rs. 17,000 were deposited, but only 7,000 were shown in the cash receipt by manipulating the stamp in such a manner. The inquiry officer after hearing the workman and the Management proved that an amount of Rs. 17,000 was deposited, but the receipt was stamped in such a manner that it could look that only Rs. 7,000 have been deposited. The inquiry officer held that there was no mala fide on the part of the workman to stamp the receipt in such a manner as is alleged but in view of the subsequent conduct of the workman the inquiry officer held that the intentions of the workman were not bona fide as he along with Mr. J. S. Jayoti, head cashier retained the amount of Rs. 10,000. He tampered with the record and thereby conducted in a manner unbecoming of an employee of the Financial Institution. Therefore, there is no merit in this submission of the workman.

The workman then claimed that the chargesheet was served on the workman by an incompetent officer. This submission of the workman is also without any merit in view of the circular no. 1012 dated 13th of April, 1987. The copy of the circular is on record which was issued by the General Manager and it reads that the circular has the approval of chairman and the MD and it has replaced the circular no. 238 dated 23rd Nov., 1983. According to this circular the incumbent, in charge of each office was empowered to issue and serve the chargesheet on the defaulting workman and to suspend him if considered necessary, but after obtaining approval of the Disciplinary Authority designated under para 2. Under this provision a Regional Manager was competent to take disciplinary action against any officer working under him and in the case of exceptionally very large branches the AGM and the Chief Manager was the competent authority. The workman has nowhere claimed that the incharge of his branch, who was Senior Manager was not the incumbent incharge of that Branch so was not competent to issue the charge sheet. During the course of inquiry he did not put any question to the witnesses or the person who served the charge sheet upon him to know that the prior approval of the Disciplinary Authority was not taken or not.

The next claim of the workman is that though the Head Cashier Shri J. S. Jyoti was also found to be involved in the transaction but the inquiries against both of them were conducted separately although the occurrence was the same and thus the workman got prejudiced by the conduct of the Management. However, he has failed to show as to how he was prejudiced by being proceeded against separately. It was required of him to have high lighted the prejudice caused to him in his pleadings and also during the cross examination of the witnesses of the Management. Mere allegation that he was prejudiced is not sufficient. The next claim of the workman is that he was not provided with the copy of the inquiry report, therefore, he could not make proper representation. The Management in their Written Statement has taken categorical stand that the workman was served with show cause notice accompanied by the report of the inquiry officer. Against this claim of the Management the workman did not raise any finger. Now it does not lie in his mouth to claim that he had not received the copy of the inquiry report.

I do not find any weight in the submission of the workman that the punishment awarded to him was bad as para No 19.6 sub clause D of the Bipartite Settlement nowhere makes mention of "increments". It only refers to "increment". This argument seems to be absurd. It is not a question of use of singular or plural of the increment. The word used would always mean the increment/increments. The moment the punishment is awarded that of more than one increment the word become plural. Therefore, I find that the workman has failed to show that the finding of the inquiry officer was absurd and the punishment awarded by the Disciplinary Authority was disproportionate. Even otherwise this Tribunal in the exercise of its judicial review cannot go into the correctness of the finding of facts so long the workman is not able to show that the findings of facts so arrived at by the inquiry officer was totally absurd and not proper. This Tribunal has very limited powers while exercising powers of judicial review as it is not the court of fact. It can only see whether the inquiry officer followed the provisions of law and principles of natural justice while conducting the inquiry. There is nothing in the inquiry proceedings to show that the workman was not given proper opportunity to defend himself. In this view of mine I get support from the judgements of the Hon'ble Supreme Court of India reported as AIR 1998, 300, 1999(1)SCT 642 and 999-II LLJ 1415.

In view of the discussion made above I am of the opinion that the workman has failed to show that the action of the Management of PNB, Ludhiana in imposing the penalty of stoppage of two increments with cumulative effect by order dated 1992 was illegal and unjustified. He

is, therefore, entitled to no relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, चण्डीगढ़ के पंचाट (संदर्भ सं. 1013/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/372/95-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1013/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 27-9-2007.

[No. L-12012/372/95-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1013/2005

Registered on : 17-9-2005

Date of Order : 24-7-2007

Sukhdev Singh
S/o. Sh. Bhandari Ram,
R/o. Maharal,
District Hamirpur, H.P. ...Petitioner

Versus

Regional Manager,
Punjab National Bank Ltd.,
Hamirpur, H.P. ... Respondent

APPEARANCE

For the Workman : Mr. Raj Kaushik, Advocate

For the Management : Mr. N. K. Zakhmi, Advocate

AWARD

The following reference was received from Ministry of Labour, Government of India, vide their order No. L-12012/372/95-IR (B-II) dated 3rd of January, 1997;

> "Whether the action of the Management of Punjab National Bank represented through the regional manager, Punjab National Bank Hamirpur region in terminating the service of Sh. Sukhdev Singh S/o. Sh. Bhandari Ram, a part time sweeper working in Maharal branch of the Bank in District Hamirpur of H.P. is just and legal ? If not, to what relief the workman is entitled to and from which date ?"

The notice of the reference was given to the parties who appeared through representatives and the counsel. The workman filed his claim petition and the Management their reply. The workman filed his affidavit supported by copies of documents. The Management also filed the affidavit of Shri Gurcharan Singh and placed copies of some documents on record such as vouchers, attendance sheets. The workman then made an application for a direction to the Management to produce so called original resignation letter of the workman dated 6th of January, 1995. He also tendered the affidavit of his witness in support of his case. The Management has also filed the affidavit of Shri Tejinder Kumar Sharma in support of their case. The workman appeared as witness in the case and also examined Shri Subash as his witness whereas the Management examined M/s Gian Chand, Tejinder Kumar Sharma, as their witnesses.

I have gone through the file and have also considered the submissions made by the counsel for the parties.

The dispute which has been referred for adjudication relates to the termination of services of Shri Sukhdev Singh, a part time sweeper, working in Maharal Branch of the Management Bank in Hamirpur District of H.P. The claim of the workman is that he was employd as full time peon in the concerned Branch on 1st July, 1994 and he served in that capacity upto 5th January, 1995. He admitted that he had served the Management for 180 days. Thus by his own admission he accepted the stand of the Management that the workman had served them from 1st July, 1994 to 5th July, 1995. So it is not the case of the workman that he had served the Management for 240 days 12 months preceding the date of termination of his services so as to claim the protection under the I.D. Act, 1947 hereinafter, to be referred as "Act".

The next claim of the workman is that he was appointed as a full time peon by the Management. He has not placed on record the order of his appointment appointing him as peon, as is claimed by him. In reply the Management has stated that the workman was not appointed as a Peon rather he was engaged as a Part Time Sweeper that too, in a stop gap arrangement when their regular sweeper, Hans Raj, remained away from his duties so as to fulfil his household engagement such as the marriage of his son etc. The Management has placed on record a number of vouchers certified to be true copies of the originals and the vouchers are shown to have been signed by the workman. These are exhibited as EXW-3 to EXW-9. The reading of these vouchers show that the workman was paid sweeping charges at the rate of Rs. 175 on 30th July, 1st Sep., 23rd Sep., 24th October, 17th Nov., 1994 and 31st Jan., 1995 and 16th Feb., 1995. They have also placed on record photocopies of attendance register pertaining to July, August, Sep. to Dec., 1994 and Jan., 1995. The copies of the statement, placed on record and exhibited as W-11 to W-16 contain the names of the persons who were in the employment of the Management Bank in those months. The attendance register does not contain the name of the workman so these statement do not show that the workman was working as a Peon with the Management during the period in question, as is claimed by him. The workman has placed on record photocopies of three certificates issued by the Pradhans of Maharal, but he did not produce the original of those documents nor the signatory to prove that the workman had worked as Peon with the Management during the period in question.

It has been brought on record by the Management that the workman had left the job at his own and his services were not disengaged by the Management. The Management has further claimed that since the regular part time sweeper Hans Raj, had joined his duties, therefore, the workman got relieved automatically; and that he was not disengaged by the Management. Against this claim the workman has not produced any evidence. He has only claimed, in his statement, that he was recruited against the post of a regular safaiwala and his engagement was not a stop gap arrangement or that his services were disengaged on the arrival of the regular employee. As against to it the Management examined Shri Gian Chand and Tejinder Kumar Sharma as their witnesses. At the request of the workman, one Subhash was also examined as a witness, but their statements related to a letter exhibit WW-2/1. The Management claimed that the workman himself had left the job as he demanded more wages than he was getting. The workman stated that he relies upon the document a copy of which he has placed on record. At his request one Subhash was summoned as a witness, who proved this documents WW-2. He stated that he had read over the contents of the application to the workman before he was signed thereon. He however, claimed that the original document did not contain the two lines which have been incorporated in it. He claimed that those two lines were added later on. He denied that the workman had decided to leave the job in case he was not paid Rs. 40 per day as wages.

A perusal of the document Exhibit WW-2 shows that by this letter workman is shown to have asked the Management to increase his salary upto Rs. 40 a day otherwise he will leave the job at his own. It is true that the writing on exhibit WW-2/1 is in different hands. The document is not signed by the same person who had written the original of the application. It further shows that the endorsement was written by somebody else. But this letter definitely reads that the workman had asked for the increase of the wages otherwise he would leave the job. In my opinion this letter does not have sufficient evidentially value so as to dispose of the reference. The parties have not disputed that the workman had served from 1st July, 1994 to 5th January, 1995. The workman has failed to rebut that he had been engaged against a regular post as stop gap arrangement as the original regular employee was not been attending to his duty due to his household problem. He has also failed to show that the said sweeper had not joined his duties on 8th January, 1995. The workman has thus failed to show that it was the Management which had terminated his services. Moreover, the question of legality or illegality of termination of service could arise only if he had proved to have served the Management for 240 days, 12 months preceding the date of termination of his services. By his own admission he had served the Management only for 180 days, therefore, he was not entitled to the protection under Section 25-F of the Act. The pre requisite for that protection was having served the Management for 240 days. The workman has, therefore, failed to prove that his disengagement was not just and legal as the Management violated the provisions of the Act. The workman is, therefore, entitled to no relief. The award is passed against him. Let a copy of this award be sent to the appropriate govt. and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-II, चण्डीगढ़ के पंचाट (संदर्भ सं. 393/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/203/90-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 393/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 27-9-2007.

[No. L-12012/203/90-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 393/2005

Registered on : 19-8-2005

Date of Decision : 10-7-2007

Suresh Kumar
S/o. Late Sh. Trilok Chand,
R/o. Radha Swamy Street,
House No. BM-17/7,
Ferozepur City ... Petitioner

Versus

Deputy General Manager,
Canara Bank,
Sector-17,
Chandigarh ... Respondent

APPEARANCE

For the Workman : Shri I. P. Singh, Advocate

For the Management : Shri K. D. Aggarwal, Advocate

AWARD

The Government of India Ministry of Labour vide their order No. L-12012/203/90-IR (B-II) dated 26th Dec., 1994 referred the following dispute for adjudication :—

> "whether the action of the Management of Canara Bank, Chandigarh in terminating the services of Shri Suresh Kumar, Peon-cum-Coolie is legal and justified ? If not, to what relief the said workman entitled ?"

The parties joined the issue after getting the notice of the reference and have filed their respective claims in the shape of Claim Petition, reply to the Claim Petition and the replication. They have also supported their respective pleadings, the workman with his own affidavit and the Management with the affidavits of Shri K. Sudhindra, Senior Manager of the Management and other witnesses. The workman has also given the detail of the working days on which he served the Management from the year 1984 to 1989. There are also on record photocopies of documents, not containing the title thereof, but it contains the information about the daily wagers who worked for the Management during the year 1989 to 1992. The Management has also filed the affidavits of Shri G. S. Khera, S. N. Khurshi and V. K. Kohli for the Management. Both, the workman and Shri V. K. Kohli, appeared and made oral statements too.

I have gone through the file and have also considered the submission made by the parties and the law referred to by them. The dispute which requires adjudication is whether the action of the Management of Canara Bank, Chandigarh in terminating the services of Shri Suresh Kumar, Peon-cum-Coolie, was legal and justified and if not to what relief the said workman is entitled to.

The claim of the workman is that he was employed as Peon in Luxmi Commercial bank in Feb., 1984. In view of the notification of Government of India, dated 30th August, 1985 the said Bank was merged with Canara Bank and the workman continued working for the Canara Bank upto 26th October, 1986, at its Bhojpur City Branch on wages at the rate of Rs. 10 per day and thus he served the Management for 206 days. Claiming that he was designated as Coolie and he continuously served the Management, in that capacity, from 18th Feb., 1988 to 17th Feb., 1989, without any break. He was paid salary except for Sundays and Gazetted Holidays and so he served the Management for 365 days. He performed the duties of a peon for the Management though he was designated as Coolie; and that his services were discontinued on 24th May, 1989, but he was again engaged as water boy, upto 30th Sep., 1989 and was paid wages at the rate of Rs. 20 per day. The Management engaged one Shri Pawan Kumar on daily wages on 25th October, 1989, after terminating his services in Sep., 1989. They also appointed one Narayan Dass on

daily wages after the termination of his services; that he was not paid retrenchment compensation nor the notice pay. He was also not given any notice before the termination of the services. That, after he raised the demand notice the Management did not agree to the arbitration of joint reference and when his dispute was not referred to the Industrial Tribunal, he approachd the Hon'ble High Court which directed for referring the matter for adjudication. That, the action of the Management in terminating his services was illegal, arbitrary, therefore, the same is required to be quashed. The further claim of the workman is that the Management had acknowledged, in a matter referred, at the instance of another retrenched worker, Anil Kumar, that he had a right to the post. The claim of Shri Anil Kumar resulted into an award which was passed with costs against the Management. Shri Anil Kumar was reinstated and his services have been regularized. Like him Shri Anil Kumar was not sponsored by the Employment Exchange and the workman had served the Management for greater period than Anil Kumar. He has further claimed that both Pawan Kumar and Narayan Dass were engaged after the termination of the workman and the action of the Management in engaging them was in violation of Section 25-F of the I.D. Act, hereinafter to be referred as Act. Their action was also an unfair labour practice. He has prayed that the Management be directed to reinstate him in service with all consequential benefits including seniority, pay and allowances besides the interest his services may also be regularized.

The Management has opposed the claim of the workman that since the petitioner has not worked for the Management for 240 days preceding 12 calendar months, therefore he has no right to seek under the Industrial Dispute "Act", for short Act. It is further claimed by them that the workman was engaged as a water boy during the summer season and his services were utilized for catering to the temporary increased the work. His engagement came to an end automatically as the need evaporate and his contract of engagement was not renewed and was treated to be terminated. There was no regular post of water boy with the establishment, therefore, there was no basis for the workman to claim for regularization or absorption in the Management. They have further claimed that all the staff of the Management Bank are governed by Shastri and Desai Awards besides by bipartite settlements. Since the subg staff of the Management could proceed on leave at times even without prior notice, therefore, the Management had maintained a panel of daily wagers to be engaged as and when the staff proceeded on leave. The candidates placed in the panel were sponsored by the employment exchange and the engagement was done in accordance with the criteria laid down. The workman was neither sponsored by the employment exchange nor he fulfilled the criteria for engagement. As per the practice, those who were engaged in the absence of sponsorship by the employment exchange, could not be regularized.

On merits the submission of the Management is that the workman was engaged as a Coolie, on a daily wages basis by the erstwhile Luxmi Commercial Bank in the year 1984 and his services were utilized for temporary and specific work. The Luxmi Commercial Bank merged with the Management Bank w.e.f. 23rd August, 1985, therefore, the workman was engaged as a Coolie by the Respondent Bank as per requirement and the engagement was purely temporary and for specific period. The engagement got terminated on the fulfillment of work for which he was engaged. The workman was engaged as Water Boy from 24th May, 1989 to 30th Sep., 1989. Even othewise the workman did not serve the Management for 240 days 12 months preceding the date of his alleged termination. Claiming that Shri Pawan Kumar was engaged on 27th Feb., 1989 and his last engagement ended on 12th May, 1989. Shri Narayan Dass is not working with the Management since long; and that since the workman is not a workman, therefore, he is entitled to any relief. Claiming that the case of Anil Kumar was decided on different grounds since that was a case of retrenchment. The workman in this case has worked for 36 days as a whole and that the Pawan Kumar had been engaged purely on temporary basis intermittently from 14th Feb., 1989 to 12th May, 1989 and all of them were disengaged. None of them had worked for 240 days preceding the day termination of their services. Neither Pawan Kumar nor Narayan Dass are working with the Management as both of them disengaged long ago. The allegation of violation of Section 25-H of the Act is wrong. The workman stated nothing new in his replication and only reasserted the facts stated in the Claim Petition.

The workman filed his affidavit and the Management that of their witness V. K. Kohli and both of them appeared in the witness box whereas the witnesses of the Management M/s. K. Sudhindra, R. C. Rajan, G. S. Khera, S. L. Munshi were not brought in the witness box so as to give the workman opportunity to cross examine them.

Before I approach to appreciate the claim of the workman, he, in his statement, stated that he relies upon his affidavit W-1 and the documents W-2 to W-4. He admitted that he had not received any appointment letter from the Luxmi Commercial Bank or from Canara Bank. He further admitted that he was a daily wager; and that he was engaged as a water boy on 24th May, 1989 to September, 1989, during summer season, but claimed that he was also doing the work of the Peon, whole of the day. He admitted that he was not engaged, through employment exchange but stated that he had worked for the Management continuously without any break from the year 1988 to Feb., 1989. He however, did not admit that he had not served the Management for 240 days from October, 1988 to Sep., 1989. On the other hand Shri V. K. Kohli who appeared as a witness for the Management stated that the workman had worked for Luxmi Commercial Bank in the year 1984 and

after the merger of Luxmi Commercial Bank the workman had reported for duty in the Management Bank; and that the workman had served the Management in the year 1989. He further admitted that the workman had served the Management as Water Boy from 24th May, 1989 to 30th Sep., 1989. He denied that the workman had served the Management from 17th Feb., 1988 to 17th Feb., 1989. He further stated that there was no question of termination of services of the workman since the water boys used to be engaged from May to September only every year. Similarly Pawan Kumar and Narayan Dass were engaged as Water Boys in subsequent years immediately after the disengagement of the workman.

On record, except the statement of the workman, there is no evidence to show that the workman had served the Management continuously for 240 days. The reference also does not make a mention as to from which date the services of the workman were terminated. No order of appointment of workman as a Peon has been placed on record nor the workman claimed the same to be in his possession. He rather denied that any such appointment letter was issued in his favour. He has thus failed to show that he had served the Management for 240 days before the date of termination of his services. In the Claim Statement he stated that he had worked with the Management from 18th February, 1988 to 17th February, 1989 and was designated as a Coolie. In para 3, he stated that he was disengaged on 19th September, 1989 and he had continued serving the Management upto 18th September, 1989. Earlier his services were discontinued on 14th May, 1989. Therefore, I find that the workman has not remained firm in making the claim as to from which day his services were terminated. He has placed on record no evidence to show that upto what date he had served the Management. He has also made contradictory statement about the payment of wages. He gave the figure as 10, 20, 24, 26 and 27. Neither he produced any documentary or oral evidence to prove the days he served the Management nor he requested for summoning the record from the Management. The Management must be having record by which they had paid the wages to the workman for the period he served the Management. But no such record has been produced. The workman has, therefore, failed to prove the he had continuously served the Management for 240 days in 12 months preceding the date of his disengagement on 19th September, 1989. He has also failed to show that the Management had retained his juniors in service while his services were retrenched. He has also failed to show that the Management had recruited fresh hands without providing option to the workman to work. The evidence brought on record rather shows that the workman was engaged as water boy for summer months and his services were for tenure period from May to September, 1989 and the same came to an end on the expiry of the tenure, in September, 1989. The engagement of workman was otherwise not by a procedure laid down for recruitment in the Management. The engagement was for a short term during summer months. Therefore, his disengagement, which was automatic on the expiry of engagement period was not a retrenchment as per Act. I have, therefore, not found evidence much less cogent evidence to show that the services of the workman were terminated by the Management; and that he was a workman who had served the Management as Peon for 240 days in 12 months preceding the date of termination of services. For want of evidence the award is passed against the workman holding that he is not entitled to any relief. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2007

का. आ. 3125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, चण्डीगढ़ के पंचाट (संदर्भ सं. 1033/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/296/98-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th September, 2007

S.O. 3125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1033/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between management of Punjab National Bank and their workman, which was received by the Central Government on 27-9-2007.

[No. L-12012/296/1998-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 1033/2005

Registered on : 19-9-2005

Date of Decision : 12-7-2007

Sukhdarshan Singh,
S/o Late Sh. Atru Ram,
R/o Mohalla Chandigarhiya,
I. T. I. Road,
Sirsa (Haryana) ... Petitioner

Versus

The Regional Manager,
Punjab National Bank,
Regional Office,
Delhi Road,
Hissar ... Respondent

APPEARANCE

For the Workman : Shri Suresh Chauhan, AR

For the Management : Shri H. L. Khattar, Advocate

AWARD

This Tribunal is called upon to adjudicate the dispute between the workman and the Management, referred by the Ministry of Labour, Government of India, vide their Order No. L-12012/296/98/IR(B-II) dated 13th May, 1999. The dispute is in two parts which reads as under :

"Whether Shri Sukhdarshan Singh S/o Late Shri Atru Ram has completed 240 days service with the Management of Punjab National Bank ?"

"Whether the action of the Regional Manager, Punjab National Bank, Delhi Road, Hissar in terminating the services of Shri Sukhdarshan Singh S/o. Late Shri Atru Ram w.e.f. 29th July, 1997 is just and legal ? If not, what relief the workman is entitled to ?"

Upon notice the parties appeared and submitted their respective cases in the shape of Claim Statements, affidavits of the workman and that of Bhushan Bhatia, Senior Manager. The parties have also placed on record photo-copies of a number of documents such as register of salary account, credit cash vouchers. Both the workman as well as witness of the Management, Bhushan Bhatia appeared as a witness. Parties have also submitted their arguments.

I have gone through the file.

First part of the reference relates to the performing of duty by the workman for the Management for 240 days. The workman in his Claim Statement asserted that he had served the Management from the year 1993 to September, 1996. He reiterated this fact in his affidavit dated 4th July, 2000, which was exhibited as W-1, but in the same vein he stated that he had worked in a leave vacancy. Thus it is clear that the engagement of the wokman was neither regular nor temporary and he was engaged as a daily wager for doing jobs and his engagement was co-terminus with the reporting back on duty by the permanent employee of the Management, against whose post he claims to have been engaged by the Management. Lastly he claimed that he had continuously worked for the Management from 4th October, 1996 to 28th July, 1997, but in the same breath he stated that the Management had shown him having worked for them only for 36 days and the remaining period, during which he served the Management, they showed the name of some other person, who did not exist in the Universe. Thus we find that the workman by his own evidence has failed to show that he had served the Management for 240 days during his engagement and specifically 12 months preceding the date of termination of his services. He placed on record the handwritten notes of Messrs Kewal Krishan working in the Arjan Attache House near PNB Sirsa in Rodhi Bazar and of Mehar Chand S/o Satlu Ram employee of another PNB Sirsa. None of these two witnesses were produced so as to give the Management a chance to cross-examine them about the statement made by them in writing. On record there are a number of photocopies of register of sundry accounts and credit cash vouchers some of which contain the signatures of such Sukhdarshan Singh and some that of Rani, Mehar Chand, Raj Kumar, Babu Ram and others, without showing as to how these documents support the claim of the workman.

The workman appeared as a witness and proved his affidavit exhibit WW-1. He admitted that he was not given any appointment letter by the Management nor they marked his presence; that he was not interviewed before engagement. He also admitted that whenever the permanent employee proceeded on leave, he was called for doing the work. The last statement supports the claim of the Management that the engagement of the workman was not permanent. He used to be engaged whenever the permanent employee proceeded on leave. In this situation so as to prove his claim the workman was required to prove that he was engaged on post of such and such permanent employee of the Management or such an employee absent from duty or went on leave; and that he had served the Management for 240 days in that capacity, 12 months preceding the date of his termination. The workman has utterly failed in proving his claim that he had served the Management of PNB for 240 days continuously.

The other part of the reference relates to the question whether the Management had terminated the services of Sukhdarshan Singh w.e.f. 29th July, 1997 and whether that termination was just and legal or not. It is true that in his Claim Statement the workman stated that he had continuously served the Management from 4th October, 1996 to 28th July, 1997, thereby he claimed that his services were terminated by the Management. There is no order of termination of his services, on record. The workman has also not produced any evidence, oral or documentary, to show that it was the Management who had terminated his services. He has also failed to prove that he had been paid wages by the Management till 28th July, 1997. In his Claim Statement and affidavit, he claimed that the Management with malafide intentions, in their record, showed a fictitious name of the workman who had served them from 4th October, 1996 to 28th July, 1997 whereas he had worked for them during that period and only for 36 days his presence was shown. The workman has not produced any evidence to show that during the period from 4th October, 1986 to 28th July, 1986 it was the workman who performed the duty of sweeping the Bank premises of the Management Bank

and the person shown to have worked during that period did not perform their duty, nor they existed anywhere. There is absolutely no evidence to this effect. Mr. Bhushan Bhatia who appeared as a witness for the Management stated that the workman had served the Management from November, 1996 to March, 1997, only for 36 days. He denied that the payments were shown in bogus names. He claimed that Shri R. N. Mehandiratta of the Management was the Branch Manager during the period in question. The workman, who was to prove his case, so as to get relief, has not examined said Branch Manager, as his witness, directly or through the Court so as to support his claim that it was he who had been served the Management continuously from 4th October, 1996 to 28th July, 1996 and it was he who had been paid the wages for that period. There must be no of other official of the Bank who would have seen the workman cleaning the bank premises but none is produced nor any reason is given for not doing so.

On record I do not find any evidence to show that it was the Management which had terminated the services of the workman on 29th July, 1997. The evidence on record rather shows that the workman had worked for the Management on daily wages against the leave arrangements of permanent employees, from time to time, and not continuously for 240 days. The reference is, therefore, answered against him holding that he is not entitled to any relief. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 1 अक्तूबर, 2007

का. आ. 3126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इन्सटिट्यूट ऑफ स्पोर्टस के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चण्डीगढ नं.-2 के पंचाट (संदर्भ सं. 345/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-10-2007 को प्राप्त हुआ था।

[सं. एल-42012/124/2002-आई आर (सी एम-II)]

अजय कुमार गौड़; डेस्क अधिकारी

New Delhi, the 1st October, 2007

S.O. 3126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 345/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh No. II as shown in the Annexure, in the Industrial Dispute between the management of National Institute of Sports, and their workmen, which was received by the Central Government on 1-10-2007.

[No. L-42012/124/2002-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 345/2005

Registered on : 16-8-2005

Date of Order : 8-8-2007

Raj Kumar,
S/o Shri Mular Mandal,
R/o Sanauri Adda,
Prem Chand Saw Mills,
Patiala ... Petitioner

Versus

The Director,
National Institute of Sports,
Old Moti Bagh,
Patiala ... Respondent

APPEARANCE

For the Workman : Ms. Jyoti Chaudhary, AR

For the Management : Shri D. C. Khanna, Advocate

AWARD

This is a reference made under Section 10 of the I.D. Act, hereinafter to be referred as "Act" received from Ministry of Labour, Government of India vide their no. L-42012/124/2002-IR (CM-II) dated 30th October, 2002. The reference reads as under :—

> "Whether the action of the Management of National Institute of Sports, Patiala in terminating the services of Shri Raj Kumar S/o Shri Mallar Mandal, Waitor, without paying him any retrenchment compensation w.e.f. 26th October, 1994 is legal and justified ? If not, to what relief the workman is entitled to ?"

The notice of the reference was given to the parties who appeared through their counsel. The workman filed the Claim Statement and after the filing of the Written Statement of the Management, he also filed the rejoinder and supported his pleadings by his affidavit. The Management filed affidavit of Shashikant Goswami, Scientific Officer, in support of their pleadings. The workman placed on record a demand notice and other documents. He also made the statement and faced the Management in the cross-examination. The Management also filed the affidavit of their Mess Supervisor B.P. Singh and U.S. Lal but examined only Messrs. U. S. Lal and B. P. Singh the third witness seems to have been left over by them. After

the completion of the proceedings, both the parties filed written arguments, which are on record.

The claim of the workman is that he was appointed as a waiter in the mess of National Institute of Sports Patiala on 8th October, 1991 and was last drawing his salary at the rate of Rs. 850 pm. That his services were terminated on 26th October, 1994 by an illegal, unlawful and unsustainable order, as by then he had put in the service of 240 days, for the Management, and was under the protection of the Act. However, the Management, before terminating his services neither gave him the notice nor paid him the wages for the notice period. They also did not pay him the retrenchment compensation and thereby violated the provisions of Section 25-F of the Act. They further violated the provisions of the Act, as they retained the juniors of the workman but terminated his services further violating the principle of first come last go and provisions of Section 25-G of the Act. He has further claimed that a post on which he has working is still existing. It is further the claim of the workman that he was entitled for regularization, having put in more than three years of service. He further stated that he had filed a suit for permanent injuction restraining the defendants from terminating his services which was later on transferred to CAT, Chandigarh. However, the suit was dismissed on the ground that his services had already been terminated before the filing of the suit and it was held that the suit is not maintainable. It is further his claim that since the matter was not decided on merit, therefore, there is no bar to maintain the present reference. The prayer of the workman is that his termination may be quashed and he may reinstated on the post, he was working with back wages, continuity in service and all ancilliary benefits.

The claim of the workman has been opposed by the Management, both by raising the preliminary objections and on the grounds taken in reply to the claim of the workman, on merit. It is submitted by them that since the Management did not terminate the services of the workman, therefore, the reference made is mis conceived. Also for the reason that the workman himself has admitted in his plaint, filed before sub judge, Patiala, on 12th Nov., 1994 that the Management intends to remove himself from service. Then how could he had been removed from service on 26th October, 1994. Their further claim is that since the workman has not supported his claim with the list of witnesses and documents in terms of Rule 10-B of Industrial Dispute Central Rules and also for his having round about statements. Their further claim is in terms of the order of the Government of India, Section 14, Sub Clause 3 of Administrative Tribunal Act was to take effect against the Management w.e.f. 17th July, 1995, therefore, they were not within the preview of the Tribunal Act under the said before that date. Lastly they have raised the preliminary objection that since the workman was a daily rated casual waiter, whose service came to an end on each day, therefore, he cannot make a claim against the Management.

On merits it is their submission that as per record, the workman was last paid at the rate of Rs. 450 and not @850 as is claimed. They denied that the services of the workman were denied by the Management. They further denied that the provisions of Section 25-F, of the Act provided protection to the workman. They also disputed that the Management had retained his juniors and terminated the services of the workman. The fact according to them was that the workman had abandoned the job at his own. They described the some paras of the Claim Petition as a matter of record and denied the contents of other paras and stated that when the workman himself has admitted the delay in making the claim he should not have tried to take advantage of that. They have prayed that since there is no merit in the claim of the workman, therefore, the reference may be rejected.

The workman filed the rejoinder and submitted that since the Management had not provided him work on 26th October, 1994, therefore, he had filed a suit in the civil court presuming that he was still in service and the Management wants to get rid of him illegally, therefore, he sought a relief of mandatory objections on 12th Nov., 1994. But when the Management filed the Written Statement in the suit it was then they disclosed that the services of the workman stand terminated w.e.f. 26th October, 1994. Thus the claim of the workman for mandatory injections was in view of his belief and the demand was raised after the Management filed the Written Statement. He has further claimed that the binding of rule 10-B of the central Rules 1957, was that on Management, as the onus of proof to justify the termination of the workman was on the Management and not on the workman, who was only to rebut the case of the Management bank. He has further stated that the suit of the workman was not decided on merit, but for want of the maintainability. He denied the contents of paras of the Written Statement as wrong, mistatements and vague. He claimed that the Management had violated the provisions of Section 25-F of the Act. He reaffirmed the grounds taken by him in the Claim Petition, to seek the relief. Regarding other contents of the Written Statement, he stated that the same do not need any comments.

The workman filed his affidavit, and as stated earlier, the Management filed the affidavits of Messrs Sushant Goswami, B. P. Singh, U. S. Lal. They however examined only U.S. Lal and B. P. Singh.

In his statement, before this Tribunal, the workman admitted that neither he had made any application for appointment nor he was sponsored by the employment exchange. He was also not given any appointment letter, but denied that he was appointed on Casual basis and there were breaks in his service. He further denied that he was paid a monthly salary of Rs. 450 and claimed that he was getting Rs. 850 as his monthly salary. He further contested that his services were not terminated on

26th October, 1994. He admitted that he is working as a Mazdoor; and that he is married and is paying Rs. 700 per month as rent.

B. P. Singh who appeared as a witness for the Management deposed that the workman, named is para 5-C of the Claim Petition were working with the Management in the year 1995, when he joined the service with the Management except Mahavir, Satguru, Ashok Kumar, Jai Prakash and Raj Bahadur. He, however, could not say whether they were working with the institute earlier also. He further admitted that those who are working since 1995 were not recruited through the employment exchange. He further stated that the salary of the workman in the year 1994 was Rs. 450 and not 850. He could also not say that the workman had served the Management continuously from 8th October, 1991 to 26th October, 1994. He also could not say that the workman was paid compensation at the time of leaving the job. He stated that the Management has not prepared the seniority list since they are getting the workers through the contractor. He could also not say that the juniors of the workman were still working with the Management. Shri U. S. Lal in his statement deposed that the Management had recruited workers like Rajesh and others, without the recommendations of the employment exchange nor the workman was denied the job for that reason. He could not produce the record pertaining to the payment of wages to the workman stating that it was handled by the Accounts Section; and that he could not say what were the wages of the workman although in the Written Statement those are shown to be as Rs. 450 per month. He admitted that when the workman stopped coming to the institute the Management did not issue any notice to him to join duties nor they had terminated his services. The workman himself had stopped coming on duty. He admitted that the workman was not paid any retrenchment compensation.

I have gone through the file and have also considered the arguments submitted by the parties in writing.

The reference, under the consideration of this Tribunal, is very specific and relates to the termination of the workman from service by the Management without paying him the retrenchment compensation w.e.f. 26th October, 1994. There is no reference about the retention of the juniors of the workman and terminating the services of workman. Therefore, that claim of the workman cannot be considered for want of reference.

The workman has claimed that he had joined service with the Management on 8th October, 1991 and had served them, without breaks, upto 26th October, 1994 when his services were terminated by the Management. There is no order of appointment or termination on record. But the Management has not denied that the workman had served them upto 26th October, 1994. In reply to para no. 1 of the Claim Statement, they have stated nothing about the date of joining of the service by the workman on 8th October, 1991. They only disputed the amount of salary the workman received at the time of his alleged disengagement. Their witnesses also could not say since when the workman had joined the services, but at the same breath, the witness of the Management, in his affidavit, admitted, in para 2, that the workman was engaged as Mess Boy on 8th October, 1991 and he continued serving the Management upto 25th October, 1994. He, however, claimed that the engagement of the workman was purely casual and on ad hoc basis; and that during the engagement of the workman, there were many breaks in the service. He however did not give the detail of the breaks in the service of the workman. The Management placed on record the attendance detail of the workman although the same is not signed by any body including Shri U. S. Lal. They however admitted the correctness of the detail as given in para no. 3 of the affidavit of Shri U. S. Lal, exhibited MW-2/1. As per the detail the workman had served the Management from 8th October, 1991 to 26th October, 1994. Going back 12 months preceding the date of his disengagement i.e. 26th October, 1994, the workman had continuously served the Management during those 12 months except for 3 days in April, 1994, 3 days in June, 1994 and 3 days in August, 1994. Thus there is no dispute as per the evidence of the Management that the workman had served them for 240 days in 12 months preceding the date of termination of his services.

Shri U. S. Lal, witness of the Management in his statement admitted that the Management had not paid any retrenchment compensation to the workman. It is also not claimed by them nor proved that they had issued notice to the workman before the termination of his services or had paid him the wages for the notice period. The Management, therefore, violated the provisions of Section 25-F of the Act, as they terminated the services of the workman without issuing him the notice and giving reasons for disengaging him. They also did not pay him the wages for the notice period nor retrenchment compensation. The disengagement of the workman was, therefore, bad in law.

The plea of the Management is that they had not terminated the services of the workman rather it was the workman who had left the job himself. In my opinion there is no basis for the Management to claim that. They have failed to prove that, after the workman left the job, as is claimed by them they had tried to ascertain as to why the workman has not come for duty. This was the requirement of principles of natural justice. Moreover, it is admitted by the Management that the workman had filed a suit in a civil court at Patiala requesting for an adjunction against the Management prohibiting them to disengage the workman from their service. They placed, on record, the copy of the plaint which is verified was 12th Nov., 1994. If the workman had left the job himself then why should he had approached a civil court for injunction within 15 days i.e. on 12th Nov., 1994 and by the Management did not ask him to join the

service, if they had not disengage him on the day they filed Written Statement opposing his claim. There is, therefore, absolutely no truth in the claim of the Management that the workman had himself left the job; and that it was the Management which had disengaged him, from the service. They reliance placed by the Management on the authorities referred to in para no. 3 of their Written Arguments is, therefore, misplaced in view of the proved facts.

There is also no truth in the claim of the Management that in his suit filed before a civil court, the workman did not claim that his services had been terminated. In his rejoinder, he has explained in what circumstances he had made that claim, as he was not aware till the filing of the suit, that his services have been terminated. He was under the impression that the Management has intentions to disengage him without any justifiable cause, therefore he had filed the suit for injunction. But when the Management claimed that his services have been terminated, he raised the demand which has resulted in the present reference.

The Management has next claimed that since the engagement of the workman was not done under any set procedure, and by a competent authority, therefore, he has no claim for the post. It is true that when the appointment of person is not made in accordance with the approved rules, certified standing orders and in accordance with the set procedure, the appointment is treated to be a back door entry and does not give a right to the appointee to hold the post. Hon'ble Supreme Court of India has settled the law by their judgement reported as Secretary State of Karnataka and Others Vs. Uma Devi and Others reported as 2006(4) SCC Page 1. There can be no dispute about this settled principle of law, but the question before this Tribunal is whether the disengagement of the workman was legal and justified or not. It is not disputed by the workman he is not governed by the Act and that in view of his length of service, he has the protection of Section 25-F of the Act. It is proved that the Management did not comply with the said provision of the Act, therefore, the disengagement of the workman was bad in law. Hon'ble Supreme Court has not touched the Act to examine the legality of the terminations thereunder. They have only held that the appointments made without following the procedure are bad in law having been made in violation of provisions of Articles 14 and 16 of the Indian Constitution. But in this case the disengagement of the workman by the Management was bad in law having been made in violation of Section-25F of the Act, therefore, the same is quashed.

There is no weight in the submission of the Management that the workman was late in making the claim. As is stated above, within less than a month from the date of his termination, he filed a civil suit, which was transferred to the CAT. The workman has the claim before the CAT, as he must have been advised. The CAT decided the matter on 11th July, 2000, holding that the suit was not maintainable. The workman within less than 3 months raised the demand before ALC. Chandigarh which has resulted in the present reference. Thus he did not waste time to raise the matter so as to be called that the reference is bad for delay and latches. This plea of the Management is also rejected.

Now the question arises as to what relief the workman is entitled to. As stated above the workman cannot claim the post against which he was working since his appointment is proved to be not made in accordance with settled procedure. The Management certainly violated the provisions of the Act, which provided protection to him. He has suffered mentally, economically and with him his family must have suffered. As claimed by him he is married and is paying 700 Rs. per month as house rent to maintain his family. So he must be striving hard to maintain his family. It cannot be said that he had been earning sufficiently to maintain his household. He is, therefore, required to be compensated for loss, mental and physical, he has suffered besides for the suffering his family has undergone. Therefore, I award him of Rs. 2 lacs as cumulative compensation for the loss of the service physical, mental and loss, including the interest. The Management is directed to pay this amount to the workman within three months from the date the award becomes enforceable failing which the workman shall also be entitled to interest on the said amount, at the rate of 9% p.a. from thedate of expiry of that period. Let a copy of this award be sent to the appropriate govt. for necessary action and file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 1 अक्तूबर, 2007

का. आ. 3127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. हाऊसिंग फाईनेन्स लि. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ सं. 25/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-10-2007 को प्राप्त हुआ था।

[सं. एल-17012/45/2003-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st October, 2007

S.O. 3127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2004) of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of LIC Housing Finance Ltd. and their workmen, which was received by the Central Government on 1-1-2007.

[No. L-17012/45/2003-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R. G. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR, U.P.

Industrial Dispute No. 25 of 2004

In the matter of dispute between :

Sri Surender Singh,
General Secretary,
Rashtriya Mazdoor Congress U.P. Branch,
43/16-Sec/15-A Sector 16 Sikandara
AGRA, U.P.

AND

The Area Manager,
LIC Housing Finance Limited,
Dholpur House,
M.G. Road,
AGRA

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide Notification No. L-17012/45/2003 IR (B-1) dated 8-4-2004 has referred the following dispute for adjudication to this tribunal :—

> Kya Area Manager LIC Housing Finance Limited AGRA dwara karmkar Sri Jagdish Prasad putra Sri Ram Charan Part Time Sweeper ko sewa me sthai nahi kiya jana Nyayochit hai ? Yadi Nahi to karmkar kis anutosh ka haqdar hai ?

2. Case in short as set up on behalf of the workman is that the workman is working as sweeper continuously w.e.f. 2-2-93 and whenever his working hours exceeds from 8 hours management used to pay him extra remuneration. Workman is raising his demand before the management for treating him as a regular and permanent employee but all in vain. He filed a case before Hon'ble High Court for his regularisation but it has been directed by the Hon'ble Court that workman should raise an industrial dispute for his regularisation in service. Beside performing the work of sweeping workman is also discharging other work of peon. It has also been pleaded by the workman that junior to him by name Rakesh Sharma has been regularised in the service of the management who was also doing the work of sweeping. Rakesh Sharma was also paid bonus being a casual employee of the opposite party. Workman was never called for any test or interview by the opposite party. It has also been alleged by the workman that being a member of Scheduled Caste community his services have not been regularised by the management. On the basis of above pleadings it has been prayed by the workman that looking to the long interrupted services of the workman he may be regularised in the service of the management as group IV employee.

3. Opposite party management has contested the claim of the workman on variety of grounds inter alia alleging that the present claim has been raised as an individual dispute under the provisions of the I.D. Act, and has not been raised collectively, therefore, it is not an Industrial Dispute within the meaning of the Act. It has also been alleged that a person appointed on ad hoc basis, casual basis, part time basis has got no right to claim regularisation of his service. There is no post of sweeper in LIC Housing Finance Limited. Workman was engaged on contract basis for about 1 or 1½ hours a day and he never worked on full time basis in the LIC Housing Finance Limited Agra. Workman was never given any appointment letter. There is no post of full time sweeper in the management. Workman was never employed by the opposite party in any capacity nor has ever completed 240 days of continuous service under the opposite party. He was never governed by the rules and regulations of the opposite party nor his name was ever sponsored by the Regional Employment Exchange nor any interview was ever held as per procedure laid down. Opposite party appoints permanent and regular employees by following certain prescribed procedure i.e. notification of recruitment in News Papers, Written Test or eligible candidates, interview of the candidates etc., and no deviation is permissible from these rules. He was never subjected to such exercise. Workman is trying to seek backdoor entry in the service of the opposite party. On the basis of above pleadings it has been prayed that the claim of the workman be dismissed.

4. Workman has also filed his rejoinder but nothing new has been detailed therein beside reiterating the facts already pleaded by him in his statement of claim.

5. After exchange of pleadings between the parties both parties filed documents in support of their respective claims and counter claim. Whereas workman has examined himself as W.W.1. Management examined its officer Sri Rajiv Nair, its officer as M.W.1.

6. Workman in his statement on oath has stated that he was appointed by the opposite party on 2-2-93 for performing the work of part time sweeper and from then he is working till date continuously. Apart from the work of sweeper he is also performing the work of waterman peon for 8 hours a day. In his cross-examination witness has admitted that he was/is being paid his wages at the rate of rupees 35 per day. He has denied the fact that he was appointed as part time. Witness has further admitted the fact that neither any written test nor interview was ever held nor he was given any appointment letter. He has also admitted the fact that he never gave any application for his appointment. He has also admitted the fact that he never gave in writing for making him regular and permanent employee only orally requested. Witness has denied the

suggestion that he had ever come across any procedure by means of which appointment of peons are made.

7. Management witness in his examination in chief on oath has stated that the workman was working as casual worker and also used to perform the work of sweeper. Workman was never paid his wages on scale basis. He never worked as full time sweeper nor any appointment letter was ever issued in his favour by the opposite party. No regular and permanent post is lying vacant under the opposite party. Workman had never applied in writing for giving appointment nor he was ever interviewed by the opposite party.

8. In his cross-examination the management witness has admitted the fact that the workman is working with the opposite party for the last 10 years. Rakesh Sharma was regularised in the year 1998. Only such persons are eligible for appointment at the post of peon who are having educational qualification below High School. Witness has denied the suggestion of the workman that he worked 8 hours per day. Except the work of sweeper no other work was taken by the opposite party from the workman. Witness has admitted the documents mentioned at serial nos. 1 to 6 of list of documents filed by the workman and states that these documents are related with Rakesh Sharma. Rest of the documents mentioned at serial nos. 7 to 12 barring document mentioned at serial no. 9 have also been admitted by the witness.

9. From the above it is abundantly clear that the workman was engaged as a part time sweeper by the opposite party and even this fact has also been admitted by the workman in his pleading as well as in his evidence. Workman has also admitted that he was neither interviewed nor any appointment letter was given to him appointing him on regular basis. It is also clear from the pleadings and evidence of the management that no regular or permanent post of peon is vacant at present. It may be pointed out that it is settled legal position that a casual employee has got no right to claim regular employment or even regularisation without undergoing through regular selection process. There is no denying of the fact that the workman was paid on daily rate basis by the opposite party, therefore, by no stretch of imagination it can be said that the workman has any right or title to claim regularisation in the service of the opposite party. Mere continuous working as part time employee on daily rate basis with the opposite party does not create any legal right in favour of the workman.

10. Apart from above a bare perusal of the schedule of reference order is indicative of the fact that there is no mention of date from which workman be held entitled for regularisation, from this point of view terms of reference is vague and bad in law and the workman either on merit of the case or even otherwise can be held entitled for the relief claimed by him in the present claim. Moreover, it is also settled position of law that Labour Court/Industrial Tribunal are not supposed to be a measure of providing backdoor entry in the public employment nor it is the domain of the Labour Court/Industrial Tribunal to hold any employee to be regular or permanent as these function is of employer who is only empowered to create post, and consider the claim of his employee for his regularisation in the service. Tribunal is also not empowered to issue any direction to the opposite party either to create any post or treat the worker as regular and permanent employee. From this point of view the case of the workman appears to be devoid of merit and is liable to be dismissed.

11. In view of above discussions, it is held that the workman is not entitled for any relief as has been claimed by him in the present reference and the reference is decided against the workman and in favour of the opposite party.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 3 अक्तूबर, 2007

का. आ. 3128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ग्रे आयरन फाऊंड्री के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एल सी/आर/120/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-10-2007 को प्राप्त हुआ था।

[सं. एल-14012/13/1994-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 3rd October, 2007

S.O. 3128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/120/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Gray Iron Foundry and their workman, which was received by the Central Government on 3-10-2007.

[No. L-14012/13/94-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/120/95

Shri C. M. Singh, Presiding Officer

Shri Mohammad Suleman
C/o Shri Brian D'Silva (Advocate),
18, South Civil Lines, Dr. D'Silva Road,
Jabalpur (MP) ... Union/Workmen

Versus

The General Manager,
Gray Iron Foundry,
Jabalpur (MP) ... Management

AWARD

Passed on this 28th day of August, 2007

The Government of India, Ministry of Labour vide its Notification No. L-14012/13/94-IR(DU) dated 22-6-95 has referred the following dispute for adjudication by this tribunal :—

"क्या प्रबन्धक ग्रे आयरन फाउन्ड्री, जबलपुर (म.प्र.) के प्रबन्धकों द्वारा श्री मोहम्मद सुलेमान, एक्स-दरबान को दिनांक 4-11-93 से अनिवार्य सेवा निवृत्त किए जाने की कार्यवाही न्यायोचित है। यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है ?"

2. Vide order dated 6-5-2005 passed on the order sheet of this reference case, the case proceeded ex-parte against the Workman Sh. Mahammad Suleman. Workman failed to file his Statement of Claim.

3. The Management filed their Statement of Claim. Their case in brief is as follows :—

That Shri Mahammad Suleman, Ex-Darban was punished for gross misconduct viz. (i) attempted theft of bi-cycle, the conduct of unbecoming of a Govt. Servant. (ii) habitual offender for which due enquiry was held and orders of compulsory retirement of the workman were passed. The penalty of compulsory retirement was imposed on the Workman w.e.f. 4-11-93 (FN). Consequently the Workman is not entitled to any relief.

4. As the case proceeded ex-parte against the Workman no evidence has been adduced by the Workman. The Management in order to prove their case filed affidavit of Shri B.P. Mishra the then working as Joint General Manager, Admn. GIF, Jabalpur.

5. I have heard Shri A. K. Shashi, Advocate for the Management. I have very carefully gone through the evidence on record. The case of the Management is fully established by the uncontroverted and unchallenged affidavit of Management's witness Shri B. P. Mishra. Against the above as no Statement of Claim and evidence has been filed for the Workman, the case of the workman is not at all proved. The reference, therefore, deserves to be decided in favour of the Management and against the Workman with no orders as to costs.

6. In view of the above the reference is decided in favour of the Management and against the Workman, in the following manner with no orders as to costs.

"प्रबन्धक ग्रे आयरन फाउन्ड्री, जबलपुर (म.प्र.) के प्रबन्धकों द्वारा श्री मोहम्मद सुलेमान, एक्स-दरबान को दिनांक 4-11-93 से अनिवार्य सेवा निवृत्त किए जाने की कार्यवाही न्यायोचित है। अत: कर्मकार किसी अनुतोष का अधिकारी नही है ?"

C. M. SINGH, Presiding Officer

नई दिल्ली, 4 अक्तूबर, 2007

का. आ. 3129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 39/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-10-2007 को प्राप्त हुआ था।

[सं. एल-40012/240/91-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 4th October, 2007

S.O. 3129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/92) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 4-10-2007.

[No. L-40012/240/91-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Reference No. 39 of 1992

PRESENT :

Sri Md. Sarfaraz Khan, Presiding Officer

PARTIES :

The D.E.T., Microwave Maintenance, Deptt. of Telecommunication, Kumarpur, Asansol, Burdwan

Vrs.

The President, All India Telecom Employers' Union (Line Staff and Group D), Asansol Divisional Branch, Asansol, Burdwan.

REPRESENTATIVES

For the Applicant : Shri P. K. Das, Advocate

For the Opposite Party : Sri C. D. Dwedi, Advocate

Industry : Telecom State : West Bengal

Dated the 18-9-2007

ORDER

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-40012/240/91-IR (DU) dated 25-9-1992 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the DET (MM), Kumarpur, Asansol in terminating the service of Sh. Abhay Kumar Bhuniya, Motor Driver w.e.f. 14-12-1989 is justified ? If not, to what relief is the concerned workman entitled to ?"

After having received the Order No. L-40012/240/91-IR (DU) dated 25-9-1992 of the above mentioned reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication of the dispute a reference case No. 39 of 1992 was registered on 1-10-1992 and accordingly an order to that effect was passed to issue notice through the registered post to the parties concerned directing them to appear in the Court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance to the said order notices by the registered post were sent to the parties concerned. Sri P. K. Das, Advocate and Sri C. D. Dwedi, Advocate appeared in the Court to represent the Management and the Union respectively. The written statements on behalf of both parties were filed in support of their respective claims.

From perusal of the record it transpires that the case was fixed for hearing the Argument of the parties but the same was adjourned to the next date at the request of the parties. It is further clear from the record that from 21-7-2005 the Union left taking any interest in this case. Since then several adjournments were given to the Union to take suitable steps on its behalf but till today i.e. 18-9-2007 no step was taken by the Union. These all facts and circumstances go to show that neither the workman concerned nor the Union is interested to proceed with this case further. So in the prevailing facts and circumstances it is not just. proper and advisable to keep this record pending any more as no useful purpose is to be served. Hence it accordingly

ORDERED

that let a "No Dispute Award" be and the same is passed. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and necessary order. The reference is accordingly disposed of.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 4 अक्तूबर, 2007

का. आ. 3130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-II, नई दिल्ली के पंचाट (संदर्भ सं. 33 एवं 28/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-10-2007 को प्राप्त हुआ था।

[सं. एल-40012/55 तथा 97/2003-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 4th October, 2007

S.O. 3130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33 & 28/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. II, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 4-10-2007.

[No. L-40012/55 & 97/2003-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

I.D. Nos. 33/2004 & 28/2004

PRESENT:

Sh. R.N. Rai, Presiding Officer

Sh. R.K. Pandit ... 1st Party

Sh. Sukumar Patt Joshi ... 2nd party

IN THE MATTER OF:

Shri Surinder and Ors.,
S/o Shri Ramphal,
C/o P-2/624, Sultanpuri,
New Delhi-110041

Versus

The General Manager,
MTNL, Khurshid Lal Bhavan,
Janpath,
New Delhi.

AWARD

The Ministry of Labour by its letter Nos. L-40012/55/2003-IR (DU) Central Government dt. 13-2-2004 and L-40012/97/2003-IR (DU) Central Government dt. 29-1-2004 has referred the following point for adjudication.

The points run as hereunder :

(1) "Whether the action of the Management of Mahanagar Telephone Nigam Limited, Delhi in relation to terminating the services of workmen, Shri Surinder, Ex-Sweeper with effect from 2-5-2001 is just, fair and legal ? If not, what relief the workman is entitled to and form which date ?"

(2) " Whether the action of the management of MTNL, New Delhi in terminating the services of Smt. Maya w.e.f. 2-5-2001 is justified ? If not, to what relief the workman is entitled and from which date ?"

I.D. Nos. 33/2004 and 28/2004 involve common dispute. These are connected cases and they can be adjudicated by common award. The grounds of both the cases mentioned above are the same. So both the above mentioned cases are taken up together.

The workmen applicants have filed claim statement. In the claim statement it has been stated that the workmen were working as a Safai Karamchari since four years at Telephone Exchange Narela, on daily wages basis at the rate of Rs. 2600 per month without any break.

That during the period of employment the entire work and conduct of the aforesaid workmen was completely satisfactory to the satisfaction of the aforesaid management and aforesaid workmen have never given any chance of complaint upon their own costs and risks.

That as the workmen have worked with the management since four years hence they are entitled to be regularized from the date of their initial appointment but the management failed to do the same.

That the workmen have demanded regularization of their services from the date of their initial appointment due to this reason the management was annoyed with the aforesaid workmen and finally terminated the services of the aforesaid workmen w.e.f. 2-5-2001.

That the termination of the workmen is completely illegal and against the principle of natural justice on the following grounds.

That before the termination of services of the workmen, the management failed to give any prior notices for termination from service.

That no proper charge sheet has been given to the workmen neither the management has conducted the domestic enquiry followed by the principles of natural justice.

That before the termination of the services, the management failed to comply with the provisions of Sections 25 (f) (g) (h) of the I.D. Act, 1947, therefore the termination of services of the workmen is completely illegal and against the principles of law.

That as the termination is totally illegal and against the law hence the workmen are entitled to be reinstated on their previous post along with all consequential benefits with full back wages but the management has failed to do the same, therefore the workmen have given legal demand notice with demand of reinstatement with full back wages along with all consequential benefits with continuity of services which is duly received but the management failed to reply to the same it means the management has rejected the demand of reinstatement as mentioned above.

That thereafter the workmen have filed a statement of claim before Conciliation Officer Labour Department, Central Government, Delhi regarding their illegal termination as mentioned above which failed due to the non-cooperative and adamant attitude of the management and a failure report has been submitted by the Hon'ble Conciliation Officer vide his letter dated 16-4-2003 and appropriate government has referred the present dispute for adjudication by this Hon'ble Court.

That the management has filed written statement. In the written statement it has been stated that the reference is bad in law in as much as the workmen are not workmen of the Management within the definition of the "workman" under Section 2(s) of the Industrial Dispute Act, 1947. The appropriate Government has not applied its mind while referring the alleged dispute for adjudication to this Hon'ble Tribunal under Section 10 of the Industrial Disputes Act, 1947, therefore the reference made by the appropriate Government is bad in law.

That the Statement of Claim and the reference are not maintainable in as much as the same are not accompanied by an Order/Letter of alleged termination on the basis of which the workmen have tried to raise this frivolous Industrial Dispute.

That there exists no employer employee relationship between the workmen and the Management and therefore no Industrial Dispute is maintainable.

That in view of the judgement of the Hon'ble Supreme Court of India in the case All India Railway Parcel and Goods Porters Union *Versus* Union of India reported in (2003) II SCC, 590 wherein it was held that the burden of proving the claim of continuous working rests on the claimants and for which they are required to furnish concrete proof and reliable documents whereas in the instant case the claimants have failed to substantiate that they were ever appointed in the Management's institution.

That in view of the judgement if the Hon'ble Supreme Court in India in the case of UP SEB *Versus* Hydro Electric Union reported in 2002 (10) SCC, 417 wherein it has been held that entitlement to a post can be determined only on the touchstone or relevant rules or on the basis that they are discharging such functions whereas in the present case, the claimants have not fulfilled any of the eligibility

conditions for appointment in the Management Organization.

That in view of the judgement of the Hon'ble Court of India in the case of State of Himachal Pradesh *Versus* Suresh Kumar Verma reported as JT 1996(2) SC 455, it has been held that appointment of Daily Wages basis is not an appointment to a post according to the rules and cannot give any protection to re-engage such person in any work or to appoint them against the existing vacancies. Therefore, also assuming without admitting that if the workmen had worked on some day, they are not entitled to any relief from this Hon'ble Tribunal.

It is specifically denied that the workmen were working as a Safai Karmchari since four years at telephone exchange, Narela on daily basis at rate of Rs. 2,600. They are put to strict proof of their contention. They were called upon to produce the letter of appointment. It is however submitted that the workmen were engaged only for 13 days in a month on part time basis @ Rs. 50 per day. It is further submitted that without following the recruitment rules nobody could have been employed and as the factum of employment itself is false the question of their drawing Monthly wage of Rs. 2,600 P.M. does not arise. The workmen have also failed to produce any such proof of employment even before the Conciliation Officer. And without substantiating even the basic relationship of employer-employee the present reference has been made mechanically without any application of mind.

It is denied that the management ever terminated the services of the above named workmen by any order. As has been repeatedly said that the workmen were never appointed by the Management therefore there is no basis for alleging that the management terminated their services. It is submitted that since there is no appointment there is not question of regularization of service.

Since there is no appointment and since there is no termination of illegality or contravening of any service by the management, there is neither any question of illegality nor contravening of any principle of natural justice. Similarly there is no question of giving any prior notice, issuance of charge sheet or question of violation of any provisions including 25 (f) (g) (h) of the Industrial Disputes Act, 1947. It is therefore submitted that the allegation of termination its hypothetical and concocted.

The workmen applicants have filed rejoinder. In the rejoinder they have reinstated the averments of their claim statement and have denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

From pleadings of the parties the following issues arise for decision :

1. Whether the workmen have completed 240 days service continuously from 1999 to 2002 ?
2. Whether the management has committed unfair labour practice ?
3. Whether the workmen are entitled to reinstatement/ compensation ?
4. To what amount of back wages the workmen are entitled ?
5. Relief if any ?

ISSUE NO. 1

It was submitted from the side of the workmen that they have worked continuously for 240 days in the year 1999, 2000, 2001 and 2002. Their services have been terminated without notice or one month's pay in lieu of notice and retrenchment compensation.

It was submitted from the side of the management that the workmen worked, no doubt but they have worked for 13 days in each month, so they have not worked for 240 days in any of the years. Attendance sheet was filed before the ALC (C). These attendance sheets relate to 1999 to 2002.

It has been further held by the ALC(C) that these attendance sheets reveal that the workmen have worked for 13 days every month, so in a year they have worked for 156 days in 1999, 2000, 2001 and 2002.

From perusal of the attendance sheets it becomes quite obvious that Sh. Surinder Singh, Ramphal, Maya Devi and Sh. Bijender have been employed all along. In the first half, sometimes the workmen, Sh. Surinder and Maya Devi have worked and for the 2nd half the workman Shri Ramphal and Bijender have worked. The attendance sheet show that the attendance of the two workmen have been marked in the first half of the month and in the second half of the month, the attendance of the other employees have been marked.

It appears that the management has engaged all these four workmen and sometimes the attendance of two or three workmen have been marked in the first half of the month and the second half of the month.

In the instant case the attendance of Maya Devi and Sh. Surinder have been marked in every month of 1999 to 2002 but either in the first half of the month and in the second half of the month. It is correct that these workmen have worked every month from 1999 to 2002. Thus, they worked continuously from January, 1999 to June, 2002 but they have worked in each month for only 13 days.

It becomes quite obvious from the above that the management to get rid of the rigors of the ID Act, 1947 has engaged two workmen in the first half and the other two workmen in the second half of the month. Thus, the management has engaged Sh. Surinder and Maya Devi in the year 1999, 2000, 2001 and up to June, 2002.

Continuous service has been defined in section 25 B of the ID Act, 1947 which is as under :

> 25B. "a workman shall said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman."

It is quite apparent from perusal of section 25 B of the ID Act, 1947 that a cessation of work which is not due to any fault on the part of the workman shall be included in continuous service.

In the instant case the management has not taken the pleas that these workmen were not available for the rest of the 17 days of the month. This is also not the case of the management that these workmen worked in different two organizations for 15 days each month and in the organisation of the management for next 15 days.

In the circumstances the cessation of work is not due to any fault on the part of the workmen.

That workmen applicants shall be deemed to be in continuous service as this cessation of work has been deliberately caused by the management.

It has been held in AIR 1981 SC as under :

> "These interruption have to be ignored to feed the workman in uninterrupted service and such service interrupted on account of the aforementioned cause which could be deemed to be interrupted would be continuous service for which the workman has been in service."

In the instant case the interruption is not due to the fault of the workmen. The management has specifically given 13 days work in the first half of the month and the management has again engaged another workmen in the second half of the month. So the cessation of the services of these workmen is not due to any fault of them. The management has deliberately engaged two workmen for the first half of the month and another two workmen for the next half of the month.

It has been held in 1996 (5) SCC 419, 1986 (Suppl.) SCC 679 and 1999 II AD (SC) 257 that in case the workman has not completed 240 days in a year, his case can be considered under Sections 25 G and H of the ID Act, 1947.

It is quite obvious from perusal of the attendance sheets filed by the management itself that the workmen Shri Surinder Singh and three other were engaged at the same time and the management took the services of two workmen in the first half of the month. Sometimes one set was engaged in the first half of the month and the other set in the second half of the month and sometimes vice versa. The attendance sheets amply disclose the engagement of these workmen in the year 1999, 2000, 2001 and upto June, 2002. The management has not taken the specific plea that any workmen has been taken on regular basis after following proper recruitment procedure. These two workmen who have doubtless worked for 13 days every month shall be deemed to be in continuous service for the year 1999, 2000, 2001 upto June, 2002 and they have worked continuously for the whole year i.e. from 1999 to June, 2002. Thus, it is established by the document of the management that these two workmen have completed 240 days in every year 1999, 2000 and 2001.

This issue is decided accordingly.

ISSUE NO. 2

It was further submitted that section 25 T provides that the management should not indulge in unfair labour practice. Section 25 U provides that a person who commits any unfair labour practice will be punishable with imprisonment for a term which may extend to six months or with fine, which may extend to Rs. 1000 or with both. The intention of the legislature in enacting 25 T and 25 U is obvious. The legislature wanted that in case Casual and Badlis are engaged for a long period, it amounts to unfair labour practice. There is punitive clause for committing unfair labour practice.

It was submitted from the side of the workmen that Vth Schedule of the ID Act specifies some practices as unfair labour practice. The Vth Schedule clause 10 provides the criteria for ascertaining unfair labour practice. It is extracted as hereunder :

> "To employ workman as Badlis, Casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of a permanent workman."

Clause 10 of the Vth Schedule stipulates that in case the workmen are employed as Casuals, Badlis or Temporary and they are continued as such for years, it will amount to unfair labour practice. In the instant case the workmen have been continued as casual and temporary for 4 years. It establishes to the hilt that the respondent management has committed unfair labour practice. The workman has been engaged for 4 years as casual and temporary and thereafter they have been removed. They have not been paid retrenchment compensation. Casuals and Badlies have been taken against their posts.

Sections 25 F, G, T, U and Clause 10 of the Vth Schedule of the ID Act have been deliberately violated by the management.

This issue is decided accordingly.

ISSUE NO. 3

It was submitted from the side of the management that even if the workman has completed 240 days and his case is taken to be correct he may be given compensation under section 11 A of the ID Act, 1947. It is true that in section 11 A of the ID Act, 1947 there is provision for reinstatement/compensation.

In the instant case the workmen have worked continuously atleast in the year 1999, 2000, 2001 and up to June, 2002. In that case the management could have avoided this un-necessary litigation. The termination of the workmen without following the provisions of section 25 F of the ID Act, 1947 is absolutely arbitrary and illegal.

Compensation is ordered when an undertaking becomes sick or closed down. The industry is functioning. There is sufficient work and these workmen can be given work. In case the work is not available, the management should consider seniority of these workmen and retrench them validly after payment of retrenchment compensation as laid down in Section 25F and considering their seniority under sections 25G & H.

In 2000 LLR 523 State of U.P. and Rajender Singh the Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

In AIR 2002 SC 1313 the Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25 F, G of the ID Act are attracted. In Section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid Section 25F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25F the service is continued and reinstatement follows as a natural consequence.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25F are not complied. In the instant case no compensation has been paid to the workmen.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed unnecessarily so Sections 25F, U, T and Cluase 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 shown that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for removal. Retrenchment compensation is for compensating them so that they can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the Government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14 & 16 are infringed. There is no constitutional mandate that the Government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and ad hoc appointments to their favorites and thus the

principles of equality enshrined in the Constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing the services of the workmen have not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in various labour welfare legislations.

Section 11A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workmen on the terms and conditions as it thinks fit.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal disengagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

The management is at liberty to engage daily wagers but at the time of termination of their services they have to comply with the provisions of Sections 25F, G & H of the ID Act, 1947. It is not valid to engage daily wagers and to remove them after taking work for 4-5 years. Section 25F postulates one month's pay in lieu of notice and retrenchment compensation.

It has been specifically held in (2006) 4 SCC 1, Uma Devi's case as under :

> "Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

The Hon'ble Apex Court also prohibits to replace an ad hoc employee by another ad hoc employee.

The Hon'ble Apex Court has held that once a workman has been engaged as daily wager or ad hoc employee he should be replaced by a regularly selected employee. It is not the case of the management that this workman was replaced by a regularly selected employee. Thus, the management has committed breach of the directions of the Hon'ble Supreme Court as well as Sections 25F, G & H of the ID Act, 1947

In case a workman is reinstated with back wages the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that Sections 25, G & H of the ID Act are not violated.

It is quite obvious from the findings of the issue Nos. 1, 2 & 3 that the workmen have continuously worked as part-time sweepers for 4 years. They are found entitled for reinstatement.

This issue is decided accordingly.

ISSUE NO. 4

It was submitted by the management that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the Labour Court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workmen in raising the dispute.

In 1978 Lab IC 1968—three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workmen were always ready to work but they were not permitted on account of invalid act of the employer.

In 2005 IV AD SC 39—three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workmen have performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

The workmen are manual workers. They are not skilled workmen. the workmen have not disclosed the source of their livelihood during the period of their unemployment. It is true that they are not employed in any establishment still they must be doing some manual work for their subsistence. The workmen have been illegally removed by the management after continuous working of 4 years.

In the facts and circumstances of the case the workmen are entitled to 25% back wages only.

This issue is decided accordingly.

ISSUE NO. 5

The workmen applicants are entitled to reinstatement along with 25% back wages.

The references are replied thus :—

(1) The action of the Management of Mahanagar Telephone Nigam Limited, Delhi in relation to terminating the services of workmen, Shri Surinder, Ex-Sweeper with effect from 2-5-2001 is neither just nor fair nor legal. The management should reinstate Shri Surinder, Ex-Sweeper w.e.f. 02-05-2001 along with 25% back wages within two months from the date of publication of the award.

(2) The action of the management of MTNL, New Delhi in terminating the services of Smt. Maya w.e.f. 02-05-2001 along with 25% back wages within two months from the date of the publication of the award.

The awards are given accordingly.

Date : 28-09-2007 R.N. RAI, Presiding Officer

नई दिल्ली, 15 अक्तूबर, 2007

का. आ. 3131.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ. 1135 दिनांक 13-04-2007 द्वारा प्रतिभूति, मुद्रणालय, हैदराबाद जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 12 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 17-4-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 17-10-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं. एस-11017/8/97-आई आर (पीएल)]
एस. कृष्णन, अपर सचिव

New Delhi, the 15th October, 2007

S.O. 3131.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 1135 dated 13-04-2007 the service in the Security Printing Press, Hyderabad which is covered by item 12 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 17th April, 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a further period of six months from the 17th October, 2007.

[No. S. 11017/8/97-IR(PL)]
S. KRISHNAN, Addl. Secy.

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